

Rulemaking during the Transition



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Biden EPA – Rules in the Pipeline

- Executive Order 13990, *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis* (January 25, 2021)
 - Ordered immediate review of actions taken between January 20, 2017 and January 20, 2021 that may be inconsistent with or present obstacles to Administration's policies, and consider suspending, revising or rescinding
 - Identified four specific categories of rules to consider suspending, revising or rescinding: methane in oil and gas sector; SAFE vehicle rules; appliance standards; air standards (NESHAP, cost-benefits, transparency in science)

Biden EPA – Rules in the Pipeline

- Administration is also committed to rules related to:
 - Air (greenhouse gas emissions, NESHAPs, NAAQS, mobile sources)
 - Water (Navigable Waters, functional equivalent, SDWA)
 - Waste (CCR, plastics, Superfund sites)
 - Chemicals (TSCA risk evaluations, reporting)
 - Environmental justice
 - Emerging contaminants and forever chemicals
 - NEPA

Rulemaking Process

- Agency activities:
 - Research to determine if rule is necessary and appropriate, if so, what should be included
 - Process could include information requests to relevant industries
 - May include an Advanced Notice of Proposed Rulemaking (ANPRM) with separate opportunity to comment
 - Significant rules reviewed by OMB Office of Information and Regulatory Affairs
- Proposed Rule (NPR)
 - Comment period
 - Public hearing

Rulemaking Process

- Evaluation
 - EPA reviews and responds to comments
 - Determines changes required and revises rule
 - Goes back to OMB (OIRA) for review
- Final Rule issued
 - Minor changes and changes that are logical outgrowth of issues discussed in the proposed rule may be included
 - Major changes may require new proposed or supplemental rule

Rulemaking Process

- Challenges to Final Rule
 - Petition for Reconsideration
 - Appeal to relevant court (Petition for Review)
 - Appropriate jurisdiction varies by type of rule
 - Motions for Stay
- Final adjudication – Final rule is “final”

Rulemaking Process, an Illustration

Date	Action	Comments
June 18, 2014	Proposed Rule	129 pages in Federal Register
October 30, 2014	Notice of Data Availability	EPA provided additional information on topics raised by stakeholders TSD also subsequently released
December 1, 2014	Comment period	More than 1.5 million comments submitted
August 3, 2015	Final Rule signed by EPA	
October 23, 2015	Final Rule published in FR	
October 23, 2015	Petition for Review filed in D.C. Circuit	Motions for Stay denied by D.C. Circuit; stay issued by Supreme Court February 17, 2016
September 27, 2016	Oral argument at D.C. Circuit	Decision never issued; administration changed and CPP repealed

Questions

