Coal, Wind, and the Second Trump Administration's Conflicting Energy Rationales

Outlining the administration's divergent treatment of energy sources, conflicting rationales for its policies, and selective response to a declared energy emergency

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On the first day of his second term, President Trump declared a national "energy emergency" and kicked off a national policy shift away from renewables and toward fossil fuel-fired energy sources. His declarations, memoranda, and orders set the tone and direction for federal agencies to prioritize fossil fuels, while emphasizing the need for more domestic energy production to address rising demand and high consumer prices.

Two energy sources exemplify the tension between prioritizing fossil energy at the expense of domestic renewable energy: coal and wind. From those first days, the administration has treated these categories as exceptional, though with opposite approaches and outcomes.

In some instances, agencies' explanations for their decisions to prioritize coal and disincentivize offshore wind have been inconsistent with — or at least in deep tension with — one another. Courts have taken notice, probing agencies' explanations for validity and reasonableness. But in many instances, even agency actions that are later overturned or halted may still have significant financial and emissions consequences. And the preferences for fossil fuel energy, like coal, over renewable energy, like wind, will have real consequences in investment decisions for other projects, overall workforce shifts, and, of course, the transition to lower-emission energy sources.

This paper explores agency actions that exemplify the administration's pro-coal and anti-wind approach (with more detail in the appendix to this document, indicated with "App." citations) and probes agencies' explanations for these actions. This analysis identifies from those examples a picture of an administration selectively citing energy demand, energy prices, and national security as reasons for its pro-coal actions while also taking anti-wind actions inconsistent with those stated reasons. It then explores how courts are responding and identifies practical implications of the administration's actions — such as creating uncertainty for renewable energy developers, difficulties for states with clean energy goals, and challenges for a future administration.

A pro-coal, anti-wind executive vision from day one

President Trump issued a series of executive orders and memoranda on the first day of his second term that have set the tone for the administration's preference for a particular energy mix and spurred agency actions that implement that vision.

- Executive Order 14154, *Unleashing American Energy*,[1] rescinded several Biden-era executive orders that addressed climate change.[2] The order also directed executive agencies and departments to rescind, revise, or suspend agency actions that burdened energy production "with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources."[3] Wind and solar energy were not on this list.
- Through Executive Order 14156, President Trump declared a national energy emergency.[4] The order asserted that "inadequate energy supply and infrastructure" were causing high

[1] Unleashing American Energy, Exec. Order 14154, 90 Fed. Reg. 8353 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01956/.

[2] *Id.* § 4(i)-(xii).

[3] *Id.* § 3(a)-(b).

[4] Declaring a National Energy Emergency, Exec. Order 14156, 90 Fed. Reg. 8433 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-02003.

energy prices and constituted an "extraordinary threat to the Nation's economy, national security, and foreign policy."[5] To address this threat, the order directed executive agencies and departments to use "any lawful emergency authorities available to them . . . to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources."[6] The order identified the Biden administration's promotion of "intermittent energy suppl[ies]" as a factor in creating the asserted energy emergency.[7]

- Despite his other orders' focus on threatened energy shortages, President Trump issued a memorandum on the same day ordering the withdrawal of all areas of the outer continental shelf from use in wind energy leasing.[8] The memorandum further ordered a halt in issuing "new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects" until the government completed a "comprehensive assessment" of federal wind leasing and permitting practices.[9]

Since inauguration day, the White House has continued to issue orders prioritizing the deployment of coal-powered energy and other extractive fuels to address the declared energy emergency.[10] Most notably, on April 8, 2025, President Trump issued Executive Order 14261, *Reinvigorating America's Beautiful Clean Coal Industry and Amending Executive Order 14241*, expressly asserting a "national priority to support the domestic coal industry" and directing a suite of federal actions to increase coal production and mining on federal lands. On the same day, the president issued Executive Order 14260 directing the attorney general to identify and stop the enforcement of state and local laws that burdened energy production.[11] As with Executive Order 14154, the order identified "oil, natural gas, coal, hydropower, geothermal, biofuel, critical mineral, and nuclear energy resources," but not wind or solar energy, for federal protection from state and local interference.[12]

Although executive orders do not create or change the law, these orders (and others discussed in this paper) demonstrate consistent direction to agencies from the highest levels of the

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[5] *Id.*

[6] *Id.* The order also directed agencies to examine how emergency provisions in the Clean Water Act and the Endangered Species Act could be used to expedite energy projects.

[7] *Id.*

[8] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01966.

[9] *Id.*

[10] *See* Reinvigorating America's Beautiful Clean Coal Industry, Exec. Order 14261, 90 Fed. Reg. 15,517 (April 8, 2025), https://www.federalregister.gov/d/2025-06380; Strengthening United States National Defense With America's Beautiful Clean Coal Power Generation Fleet, Exec. Order 14386, 91 Fed. Reg. 7,393 (Feb. 11, 2026), https://www.federalregister.gov/d/2026-03156.

The administration also issued several orders directed at increasing the nation's nuclear energy supply. *See, e.g.,* Deploying Advanced Nuclear Reactor Technologies for National Security, Exec. Order 14299, 90 Fed. Reg. 22,581 (May 29, 2025), https://www.federalregister.gov/d/2025-09796; Reinvigorating the Nuclear Industrial Base, Exec. Order 14302, 90 Fed. Reg. 22, 595 (May 29, 2025), https://www.federalregister.gov/d/2025-09801.

[11] Protecting American Energy From State Overreach, Exec. Order 14260, 90 Fed. Reg. 15,513 (April 8, 2025), https://www.federalregister.gov/d/2025-06379.

[12] *Id.*

administration to prioritize coal and sideline wind energy. Indeed, these orders serve as the stated basis for many of the federal rulemakings and orders discussed in this paper.

As President Trump's orders have directed, agencies have taken many steps to promote coal extraction and combustion for electricity generation. These have included policy changes that promote leasing for coal mining; policies that make coal mining more profitable (or financially feasible) for coal companies; orders that require coal-fired power plants to stay open past planned retirement dates; changes that relax environmental regulations and delay compliance deadlines; and direct funding for coal-related projects.

Five days before declaring that insufficient energy production and generation constituted an "energy emergency,"[13] then President-elect Trump said wind resources "should be ripped down ASAP."[14] Consistent with the president's categorical opposition to wind energy, the administration has taken a variety of steps to slow new wind energy development and even prevent the operation of completed projects. Actions have included direct orders halting construction of individual projects, out-of-court settlements canceling offshore wind leases in exchange for federal funds that companies must invest in fossil fuel projects, and a variety of policies that have slowed or halted wind energy project permitting.

The appendix to this document summarizes examples of agency actions that effectuate this pro-coal, anti-wind direction, agencies' explanations for their actions, and courts' responses where review has occurred.

Conflicting rationales for divergent treatment of coal and wind energy

The administration's exceptional treatment of coal and wind reveals internal contradictions that undermine its explanation for its actions. These contradictions make clear that the administration's proclaimed "all-of-the-above" energy strategy does not extend to renewables, such as wind. Observers have suggested that the internal inconsistency of the administration's actions taken under the mantle of the "energy emergency" reveals that the declaration was meant to pursue a policy agenda to favor certain energy sources over others.[15]

Domestic energy demand

President Trump's "energy emergency" order frames the United States' electricity demand as a crisis in need of immediate action to encourage leasing, streamline permitting, and facilitate energy

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[13] Declaring a National Energy Emergency, Exec. Order 14156, 90 Fed. Reg. 8433 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-02003.

[14] Donald J. Trump (@realDonaldTrump), Truth Social (Jan. 15, 2025, at 11:03 ET), https://tinyurl.com/yckhfa87 [https://perma.cc/FP63-KN5V].

[15] *See, e.g.*, Brief of Energy Law Scholars *Amici Curiae* in Support of Plaintiffs' Response to Defendants' Motion to Dismiss, Washington v. Trump, No. 2:25-cv-00869 (W.D. Wa. Filed May 13, 2026), https://ridgelinecenter.org/wp-content/uploads/2026/06/2026_WAvTrumpEmergencyAmicus.pdf [https://perma.cc/N3XL-7656]; Ben Diamond, *One Emergency After Another*, LAWFARE (Apr. 14, 2026), https://www.lawfaremedia.org/article/one-emergency-after-another [https://perma.cc/GFU3-8T7Y]; Greg Pollock & Joshua Busby, *Energy Security is National Security: Fixing America's Incoherent Energy Policies*, JUST SECURITY (Mar. 24, 2026), https://www.justsecurity.org/134702/energy-security-national-security/ [https://perma.cc/2WLC-JMJ2].

generation.[16] The administration has cited this emergency declaration as supporting its actions in an array of contexts.

In April 2025, the Department of the Interior (DOI) cited the declared "energy emergency" and its focus on domestic energy demand when it created an opt-in, fast-tracked National Environmental Policy Act (NEPA) review process for certain energy-related projects **(App. I.B)**, including those related to coal mining (but not wind or solar projects). The Department of Energy (DOE) has relied heavily on domestic energy demand to justify a series of orders under the Federal Power Act 202(c) **(App. I.C)** beginning in May 2025 that have required certain coal plant operators to continue running those plants past their planned retirement dates.[17] The Environmental Protection Agency (EPA) stated in December 2025 that it was necessary to extend the compliance deadlines for coal-fired power plants to comply with effluent regulations **(App. I.E.3)** to "mitigate an impending national energy emergency."[18] President Trump likewise cited energy demand and "potential disruptions of our electric and energy supplies, particularly in times of crisis," as justification when issuing presidential exemptions for coal-fired plants from the 2024 Mercury and Air Toxics Standards (MATS) in April 2025 **(App. I.E.1)**.[19] EPA cited "surging demand" as a justification for rejecting or modifying regional haze plans that made planned coal plant closures legally enforceable **(App. I.D)**.[20] And new projections about energy demand led EPA to conclude that low-capacity coal-fired power plants will continue to operate well into the future rather than retire in the short term, part of its stated rationale for repealing the 2024 Carbon Pollution Standards that required greenhouse gas emissions reductions for coal plants **(App. I.E.4)**.

But while the administration asserts that it is taking an "all-of-the-above" energy strategy to meet energy demands,[21] the "energy emergency" is not considered in agencies' explanations of their actions that have hampered wind development. The definition of "energy" in the administration's emergency declaration excludes wind energy,[22] and agencies taking actions to halt or slow wind development **(App. II.C)** have not explained how those actions can be reconciled with the stated need for additional energy production. In one instance, the administration announced that it was relaxing

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[16] Declaring a National Energy Emergency, Exec. Order 14156, 90 Fed. Reg. 8433 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-02003. The order also directed agencies to examine how the Clean Water Act and the Endangered Species Act's emergency provisions could be used to expedite energy projects.

[17] *DOE's Use of Federal Power Act Emergency Authority: 202(c) Orders Issued to Date*, U.S. DEPT OF ENERGY, https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority [https://perma.cc/H4ZB-BDYU] (linking orders issued by year).

[18] Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Deadline Extensions, 90 Fed. Reg. 61,328, 61,329–30 (Dec. 31, 2025), https://www.federalregister.gov/d/2025-24102.

[19] Presidential Proclamation, Regulatory Relief for Certain Stationary Sources to Promote American Energy, Proc. 10914, 90 Fed. Reg. 16,777 (Apr. 21, 2025), https://www.federalregister.gov/d/2025-06936.

[20] Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3056 (Jan. 26, 2026), https://www.federalregister.gov/d/2026-01413.

[21] *See, e.g.*, Press Release, U.S. Dep't of Interior, *Interior Unleashes American Coal Power in Bold Move to Advance Trump Administration Priorities* (Sept. 29, 2025), https://www.doi.gov/pressreleases/interior-unleashes-american-coal-power-bold-move-advance-trump-administration [https://perma.cc/KHQ2-GTBS].

[22] Declaring a National Energy Emergency, Exec. Order 14156, 90 Fed. Reg. 8433 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-02003.

pollution requirements for coal-fired plants **(App. I.E.1)**, stating that its action was needed to, among other things, "protect energy security," while also highlighting in the same fact sheet its actions to hinder wind development.[23]

The anti-wind actions have had real effects on future domestic energy supply from wind. Since March 2026, DOI has entered into a series of agreements to pay offshore wind leaseholders large sums in exchange for their relinquishment of those leases **(App. II.F)**. Those buyout agreements have resulted in permanent cancellation of projects that might have brought an estimated more than 21 gigawatts of power onto the grid.[24] Starting in 2025, the Department of Defense (DOD) halted its required review of onshore wind projects **(App. II.C)**, effectively freezing at least 155 projects in the permitting process.[25] DOI likewise instituted a wind authorization "pause" in 2025 **(App. II.B)** and implemented a suite of other policies that made permitting for wind projects more onerous **(App. II.C)**, including imposing new substantive requirements, barring developers from using project review tools, and requiring high-level review of all permitting decisions. And DOI in 2025 issued stop-work orders requiring utility-scale offshore wind project developers to stop construction activities **(App. II.D)** — and in some cases halt operation of projects that are already online. Although courts have enjoined many of these actions, at a minimum the actions have delayed delivery of wind energy onto the grid.

This administration's failure to recognize wind's potential to contribute to energy security is a change from the previous administration. In 2023, for example, DOE concluded that offshore wind resources could provide three times the country's then energy demand, stating offshore wind had "transformative potential" that was "critical to achieving" the country's energy goals.[26] The agency touted offshore wind as clean, reliable, a source of good jobs, and economically significant for coastal communities.[27] The Trump administration has not explained its turn away from this resource as a way to meet current and future energy demand.

The Trump administration's actions also do not always appear to be responsive to concerns of energy sector interests. In August 2025, the Department of Commerce imposed a 50 percent tariff on certain wind turbine components and opened a Section 232 investigation into wind turbine

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[23] *Fact Sheet: President Donald J. Trump Lifts Burdensome EPA Restrictions on Coal Plants,* WHITE HOUSE (Apr. 8, 2025), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-lifts-burdensome-epa-restrictions-on-coal-plants/ [https://perma.cc/SJ9D-HQ8Q].

[24] *Tracking Trump's Wasteful Offshore Wind Buyouts*, BLUEGREEN ALLIANCE, https://www.bluegreenalliance.org/site/tracking-trumps-wasteful-offshore-wind-buyouts/ [https://perma.cc/G39U-YEMT] (last accessed Oct. 9, 2026) [https://perma.cc/G39U-YEMT].

[25] *How the Department of Defense Block on Wind Projects Impacts the Grid*, AMERICAN CLEAN POWER (July 2026), https://cleanpower.org/wp-content/uploads/gateway/gateway/2026/07/ACP_DoD_BlockonWindImpact_2026Analysis.pdf [https://perma.cc/JF2V-GFLV].

[26] U.S. DEP'T OF ENERGY, ADVANCING OFFSHORE WIND ENERGY IN THE UNITED STATES (Mar. 2023), https://www.energy.gov/sites/default/files/2023-03/advancing-offshore-wind-energy-full-report.pdf [https://perma.cc/F96D-35D8].

[27] U.S. DEP'T OF ENERGY, U.S. DOE'S STRATEGY TO ADVANCE OFFSHORE WIND ENERGY IN THE UNITED STATES (last accessed Sept. 4, 2023), https://www.energy.gov/cmei/systems/us-department-energys-strategy-advance-offshore-wind-energy-united-states [https://perma.cc/H6CC-D8NN]; *see also Top 10 Things You Didn't Know about Offshore Wind Energy*, U.S. DEP'T OF ENERGY (Aug. 21, 2024), https://www.energy.gov/cmei/articles/top-10-things-you-didnt-know-about-offshore-wind-energy [https://perma.cc/4E7X-UQXZ].

imports **(App. II.G.3)**, citing the risks of foreign reliance on wind supply chains.[28] In comments on the opened investigation, the United Steelworkers argued that additional tariffs on wind components could hurt, not help, meet energy demands. They cautioned the Department to use the investigation with nuance to "foster the development of a domestic wind industry," explaining that "[e]fforts by other federal agencies to limit the deployment of wind production hinders the ability of domestic firms to plan and supply domestic projects" and "[d]efending domestic industry from imports makes little sense if domestic wind projects cannot proceed forward."[29] The Chamber of Commerce highlighted offshore wind's "significant potential" and "significant investments underway," stating that "[p]unitive restrictions on imports . . . would undermine, not advance, U.S. energy and national security."[30]

Additionally, administration actions to support coal exports undermine the idea that additional coal mining is needed to meet rising energy demands. For example, when DOE announced $75 million in funding via the Defense Production Act (DPA) for a coal export facility in Oakland, California **(App. I.F)**, it cited the energy emergency declaration — which rests on assertions of energy demand and high prices. But DOE's explanation for the project was that "[b]y facilitating access to international markets for U.S. coal, the project helps prevent the closure of domestic coal mines by growing demand."[31] This move aligns with reports indicating that the coal industry is looking to increase coal exports to international markets.[32] As domestic consumption of coal has decreased since a peak in 2007, the industry has sought to expand exports, which it reports are "essential to sustaining baseload operational volumes for domestic mines."[33] The administration has not explained how encouraging additional coal exports is responsive to domestic energy demand increases.

Consumer energy costs

The administration's assertions that its pro-coal, anti-wind actions are justified by current high energy costs for consumers are difficult to reconcile with analysis that shows bringing more wind energy onto the grid could help lower energy bills. Moreover, the administration has not demonstrated that

[28] Adoption and Procedures of the Section 232 Steel and Aluminum Tariff Inclusions Process, 90 Fed. Reg. 40326 (Aug. 19, 2025), https://www.federalregister.gov/d/2025-15819 (adding codes corresponding to wind turbines and components); Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Wind Turbines and Their Parts and Components, 90 Fed. Reg. 41,380 (Aug. 25, 2025), https://www.federalregister.gov/d/2025-16191.

[29] United Steelworkers, Comment Letter on Wind Turbines Section 232 Notice, Docket No. BIS-2025-0191 (Sept. 9, 2025), https://www.regulations.gov/comment/BIS-2025-0191-0025.

[30] U.S. Chamber of Commerce, Comment Letter on Wind Turbines Section 232 Notice, Docket No. BIS-2025-0191 (Sept. 9, 2025), https://www.regulations.gov/comment/BIS-2025-0191-0015.

[31] *Defense Production Act Title III Project Selections: Coal Fleet Projects and West Gateway Terminal*, U.S. DEP'T OF ENERGY, https://www.energy.gov/hgeo/defense-production-act-title-iii-project-selections-coal-fleet-projects-and-west-gateway [https://perma.cc/Y7P2-6FFB] (last accessed Oct. 15, 2026).

[32] Hannah Northey, *Zeldin Vows to Fulfill Coal Industry's 'Wish List.'* E&E NEWS (July 21, 2026), https://www.eenews.net/articles/zeldin-vows-to-fulfill-coal-industrys-wish-list/ [https://perma.cc/985E-KAJE].

[33] NATIONAL COAL COUNCIL, OUTLOOK AND OPPORTUNITIES FOR U.S. COAL EXPORTS, at 10 (July 21, 2026), https://nationalcoalcouncil.energy.gov/ncc/sites/default/files/studies/2026/NCC_Coal%20Exports%20Report.pdf [https://perma.cc/YY7M-4TZ4].

restricting wind development and extending the operation of uneconomic coal facilities will reduce consumer electricity costs, part of the justification for the declared energy emergency.

For example, EPA cited consumer cost as justification for loosening requirements related to coal ash **(App. I.E.2)** — industrial waste created by coal combustion at coal-fired power plants and often stored nearby that contains contaminants such as mercury and arsenic.[34] The agency did the same in its extension of the compliance deadlines for coal-fired power plants to comply with effluent regulations **(App. I.E.3)**, citing costs that would be passed onto consumers if plants had to comply by the original deadline.[35] The Bureau of Land Management (BLM) likewise justified its decision to open 13.1 million acres of federal lands for coal leasing **(App. I.A.1)** — an area well beyond what was required by the One Big Beautiful Bill Act (OBBBA) — by citing, among other things, a focus on "affordable energy."[36]

It is difficult to reconcile this focus on energy costs when the administration has at the same time prevented and slowed wind development through a wide array of actions. Onshore wind is one of the least expensive forms of energy because of its relatively low installation and operation costs. A 2024 DOE-funded report highlighted the expansion of onshore wind, noting its relatively low cost and health and climate benefits.[37] More recently, a 2026 report by investment bank Lazard finds that onshore wind is the lowest price form of new-build generation, even without tax subsidies.[38]

Offshore wind is more expensive to build, but a 2024 study projected that offshore wind installations "reduce the combined price of electric energy and generation capacity" and result in lower consumer energy bills "even at the highest assumed offshore wind farm cost."[39] Actions that slow or thwart wind development prevent realization of those decreased costs for consumers. American Clean Power estimates, for example, that canceling the five major offshore wind projects that were subject to the administration's December 2025 stop-work orders **(App. II.D)** could raise electricity costs for

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[34] Press Release, U.S. Env't Prot. Agency, *To Advance U.S. Energy Dominance, EPA Proposes Several Amendments to Coal Combustion Residuals (CCR) Requirements* (Apr. 9, 2026), https://www.epa.gov/newsreleases/advance-us-energy-dominance-epa-proposes-several-amendments-coal-combustion-residuals [https://perma.cc/D7WT-XHDY].

[35] Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Deadline Extensions, 90 Fed. Reg. 61,328, 61,344 (Dec. 31, 2025), https://www.federalregister.gov/d/2025-24102.

[36] Press Release, U.S. Dep't of Interior, *Interior Unleashes American Coal Power in Bold Move to Advance Trump Administration Priorities* (Sept. 29, 2025), https://www.doi.gov/pressreleases/interior-unleashes-american-coal-power-bold-move-advance-trump-administration [https://perma.cc/KHQ2-GTBS].

[37] LAWRENCE BERKELEY NATIONAL LABORATORY, LAND-BASED WIND MARKET REPORT: 2024 EDITION (Aug. 2024), https://eta-publications.lbl.gov/sites/default/files/2024-09/land-based_wind_market_report_2024_edition.pdf [https://perma.cc/LA4Z-H7SQ].

[38] LAZARD, LEVELIZED COST OF ENERGY (July 2026), https://www.lazard.com/media/kcfconhf/lazards-lcoeplus_vf.pdf [https://perma.cc/JEQ8-5FDD].

[39] DANIEL SHAWHAN, SALLY ROBSON, AND ETHAN RUSSELL, OFFSHORE WIND POWER EXAMINED: EFFECTS, BENEFITS, AND COSTS OF OFFSHORE WIND FARMS ALONG THE U.S. ATLANTIC AND GULF COASTS (Oct. 2024), https://media.rff.org/documents/WP_24-17_2.25_Update.pdf [https://perma.cc/HHS6-VBC9].

East Coast consumers by $45 billion over the next decade.[40] And the DOD's freeze on reviewing land-based wind projects **(App. II.C)** could, if allowed to continue, cost consumers $3 billion by 2030 by causing delays.[41]

Meanwhile, policies that shift reliance to coal-powered energy may also increase energy bills. Advocates point out that Federal Power Act section 202(c) orders requiring coal plants to run past planned retirement dates **(App. I.C)** are causing plant operators to incur costs that are likely to be passed onto consumers. As of March 2026, the estimated costs borne by consumers were above $230 million; as of this publication, the Sierra Club estimates that number has grown to more than $600 million.[42] And the D.C. Circuit, in a decision rejecting DOE's broad reading of section 202(c) and striking down its initial order requiring a Michigan coal plant to keep running, recognized that DOE's "command-and-control" approach interferes with market signals that help generators and regulators make efficient planning decisions and avoid unnecessary costs for ratepayers.[43] It is unclear whether other actions benefiting coal-fired power plants, including delayed, weakened, or eliminated standards for mercury and air toxics emissions, wastewater discharges from coal plants, coal ash storage, and greenhouse gas emissions, will save energy consumers money even where part of their justification is reducing compliance costs for coal plant operators.

Consumers may feel effects from other actions as well. The administration has reached agreements to make $4 billion in payments to wind leaseholders in exchange for their agreement to *not* develop wind energy **(App. II.F)**, an expenditure difficult to align with concerns about energy supply and cost. Stop-work orders and permitting slowdowns that have increased costs and uncertainty for developers and delayed the addition of wind energy to the grid may also have downstream costs for consumers. And the National Association of Manufacturers flagged that tariffs the administration has imposed on wind turbines and components **(App. II.G.3)** have already "raised wind turbine component costs," and "additional tariffs resulting from this investigation could increase energy prices for consumers and manufacturers."[44] While some other policies may decrease costs for the coal industry (such as reduced royalties for companies extracting coal from the federal mineral estate **(App. I.A.2)**, expedited NEPA review timelines **(App. I.B)**, and relaxed environmental

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[40] AMERICAN CLEAN POWER, CONSUMER COST IMPLICATIONS OF OFFSHORE WIND STOP WORK ORDERS (Jan. 2026), https://cleanpower.org/resources/consumer-cost-implications-of-offshore-wind-stop-work-orders/ [https://perma.cc/P4WS-MKWW].

[41] AMERICAN CLEAN POWER, HOW THE DEPARTMENT OF DEFENSE BLOCK ON WIND PROJECT IMPACTS THE GRID (July 2026), https://cleanpower.org/wp-content/uploads/gateway/gateway/2026/07/ACP_DoD_BlockonWindImpact_2026Analysis.pdf [https://perma.cc/JF2V-GFLV] (citing also affected investment, economic activity, and jobs).

[42] Robert Walton, *13 DOE Emergency Orders Have Cost Americans $235M, Sierra Club Says*, UTILITYDIVE (Mar. 18, 2026), https://www.utilitydive.com/news/doe-202c-cost-235m-coal-sierra-club/815045/ [https://perma.cc/P9HD-53LM]; *How the Trump Admin is Giving Your Money Away to Fossil Fuel Companies*, SIERRA CLUB (last accessed Oct. 19, 2026), https://www.sierraclub.org/coal/how-trump-admin-giving-your-money-away-fossil-fuel-companies [https://perma.cc/TJ4J-N8NQ?type=image].

[43] Michigan v. U.S. Dep't of Energy, No. 25-1159, slip op. at 15 (D.C. Cir. Sept. 11, 2026), https://law.justia.com/cases/federal/appellate-courts/cadc/25-1159/25-1159-2026-09-11.html.

[44] National Association of Manufacturers, Comment Letter on Wind Turbines Section 232 Notice, Docket No. BIS-2025-0191 (Sept. 9, 2025), https://www.regulations.gov/comment/BIS-2025-0191-0022.

requirements **(App. I.E)**) it is unclear whether those will result in net energy cost decreases for consumers.

Moreover, while consumer energy costs are one of the administration's stated concerns, the administration has largely ignored the public health costs of its actions. In January 2026, the administration announced that it would no longer attempt to quantify the expected public health benefits or costs of its actions when proposing or finalizing changes to environmental regulations, at least as to ozone and $PM_{2.5}$.[45] The repeal of greenhouse gas emissions standards for coal-fired power plants **(App. I.E.4)** reflects this approach, with EPA now criticizing its 2024 estimate that the climate and public health benefits of its Carbon Pollution Standards ranged from $320 to $370 billion[46] and declining to estimate those benefits (yet still stating that the costs of compliance outweigh them and justify repeal).[47]

These public health costs are a real and significant consequence of increased coal-fueled electricity. The D.C. Circuit recognized that the aging Campbell coal plant kept open by DOE emergency orders **(App. I.C)** "produces dangerous emissions, including SO_2, NO_x, and $PM_{2.5}$, that cause approximately thirty excess deaths every year."[48] By the time the court made that observation, DOE had kept the plant running for more than 15 months past its planned retirement in May 2025, and the plant is just one of six coal plants subject to such orders.

National security

National security has also played a contrasting role as an explanation for the administration's actions regarding coal and regarding wind. While the administration has repeatedly linked energy and national security in its actions that have prioritized coal development, the administration has not addressed energy supply as a national security concern when adopting policies to slow or halt wind energy development.

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[45] New Source Performance Standards Review for Stationary Combustion Turbines and Stationary Gas Turbines, 91 Fed. Reg. 1910, 1964 (Jan. 15, 2026), https://www.federalregister.gov/d/2026-00677 ("Historically, the EPA estimated the monetized benefits of avoided $PM_{2.5}$- and ozone-related impacts, which accounted for most, if not all, of the monetized benefits of many air regulations–even when the regulation was not regulating $PM_{2.5}$ or ozone within Regulatory Impact Analyses (RIAs). Throughout these analyses, the EPA acknowledged significant uncertainties related to monetized $PM_{2.5}$ and ozone impacts. The EPA has and is considering various techniques for characterizing the uncertainty in such estimates, such as estimating the fraction of avoided health effects occurring at various concentration ranges, sensitivity analyses, and alternate concentration-response assumptions. Because of the significant impacts of environmental regulations on the U.S. economy, it is essential that the Agency have confidence in the estimated benefits of an action prior to utilizing these estimates in a regulatory context.").

[46] New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39,789, 39,799 (May 9, 2024), https://www.federalregister.gov/d/2024-09233.

[47] Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, 90 Fed. Reg. 58,954, 58,994 (Sept. 17, 2026), https://www.federalregister.gov/d/2026-19071.

[48] Michigan v. U.S. Dep't of Energy, No. 25-1159, slip op. at 19 (D.C. Cir. Sept. 11, 2026), https://law.justia.com/cases/federal/appellate-courts/cadc/25-1159/25-1159-2026-09-11.html.

The government has explicitly cited national security, for instance, when exempting coal-fired plants from MATS compliance **(App. I.E.1)**.[49] EPA linked demand, cost, and national security in its explanation for its rule delaying the deadline for coal-fired power plants to comply with effluent requirements **(App. I.E.3)**: "Data centers use a large amount of electricity, making reliable and affordable power one of the most important factors to U.S. economic development and national security."[50] And when issuing Federal Power Act 202(c) orders **(App. I.C)**, DOE has cited the president's energy emergency declaration, which links energy and national security.

But the administration has repeatedly cited a different set of national security concerns, such as the potential for wind arrays to interfere with radar, when stopping or slowing wind projects. This is both the stated basis of the administration's December 2025 stop-work orders for offshore wind projects **(App. II.D)** and its offshore wind lease cancellation agreements **(App. II.F)** (which state only that had wind development on those leases continued, the Bureau of Ocean Energy Management (BOEM[51]) "would have issued . . . an order to suspend construction and operations . . . indefinitely due to national security issues, similar to the" December stop-work orders).[52] Experts have questioned whether the administration's radar-related national security rationale is valid and well considered.[53] But more generally, the government's consideration of national security issues in deciding to issue these orders or reach these agreements does not appear to have involved the purported need for additional domestic energy production as a matter of national security. In this way, it is difficult to reconcile the administration's invocation of national security in these contexts with its invocation of national security in the context of coal and other fossil fuel energy.

To be sure, national security concerns linked to energy security are not new. Both the Trump and Biden administrations voiced concerns about the impact domestic energy supply has on our national security, though their approaches to address those concerns differ greatly. While both presidents stated goals of strengthening the country's energy base, President Biden focused on domestic production of clean energy technologies, including by using the DPA to spur U.S.-based manufacturing.[54] The Biden administration's emphasis on clean energy technologies aligned with its

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[49] The administration has also cited energy-as-national-security when triggering a never-before-used provision in the Endangered Species Act to exempt oil and gas activities in the Gulf of Mexico from taking measures to protect threatened and endangered species. Erika Kranz, *Endangered Species Committee Exempts Oil and Gas Activities in the Gulf Based on National Security Finding*, HARVARD ENV'T & ENERGY LAW PROGRAM (Apr. 3, 2026), https://eelp.law.harvard.edu/endangered-species-committee-exempts-oil-and-gas-activities-in-the-gulf-based-on-national-security-finding/.

[50] Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Deadline Extensions, 90 Fed. Reg. 61,328, 61,337 (Dec. 31, 2025), https://www.federalregister.gov/d/2025-24102.

[51] BOEM is now part of the Marine Minerals Administration.

[52] *See, e.g.*, Settlement Agreement Between the United States and Bluepoint Wind, LLC at 2 (Apr. 27, 2026), https://www.boem.gov/renewable-energy/state-activities/bluepoint-settlement-agreement [https://perma.cc/M3QR-KL64].

[53] Sarah Shemkus, *Why Trump's Claim that Offshore Wind is a Security Risk is "Ludicrous,"* CANARY MEDIA (Aug. 6, 2026), https://www.canarymedia.com/articles/offshore-wind/trump-offshore-wind-claim-ludicrous [https://perma.cc/7PCT-NKJH].

[54] *President Biden Invokes Defense Production Act to Accelerate Domestic Manufacturing of Clean Energy, Department of Energy*, U.S. DEP'T OF ENERGY (June 6, 2022), https://www.energy.gov/articles/president-biden-invokes-defense-production-act-accelerate-domestic-manufacturing-clean [https://perma.cc/S7WT-KU63].

assessment that "U.S. national security requires addressing the growing impacts of the climate crisis."[55]

But observers have noted that the Trump administration's efforts to preference particular fossil fuel sources and hostility toward renewables are at odds with its focus on energy dominance: "Properly understood, 'energy dominance' means producing more energy at lower cost, with greater resilience and reduced geopolitical risk. It requires leveraging the full range of America's competitive advantages—abundant natural gas, technological innovation, deep capital markets, and world-class renewable resources."[56] U.S. industry interests reflected that observation in response to the Department of Commerce announcement that it was initiating a national security-related investigation into imports of wind turbines and related components that could add additional layers of import controls on top of existing tariffs **(App. II.G.3)**. The Chamber of Commerce urged that additional punitive restrictions "would undermine, not advance . . . national security."[57] The United Steelworkers similarly argued that wind component production "needs to be preserved if we are to meet the national and economic security needs of the U.S."[58]

Moreover, the administration's frequent invocation of national security concerns in a wide variety of other novel contexts — such as a justification for its construction of a White House ballroom[59] and a triumphal arch near the Lincoln Memorial,[60] as a reason for the DOD's blacklisting a particular AI company, and as support for its arguments that a citizen suit against an AI data center must be dismissed,[61] among others — has attracted attention and challenges. In one such suit, a court recognized that although "[t]he government is certainly owed deference on weighty issues of national security," its "contemporaneous words and deed confirm that the challenged actions were based on

[55] Press Briefing: A U.S. Framework for Climate Resilience and Security, WHITE HOUSE (Sept. 20, 2024), https://bidenwhitehouse.archives.gov/briefing-room/press-briefings/2024/09/20/a-u-s-framework-for-climate-resilience-and-security/ [https://perma.cc/8XJE-5787].

[56] Greg Pollock & Joshua Busby, *Energy Security is National Security: Fixing America's Incoherent Energy Policies*, JUST SECURITY (Mar. 24, 2026), https://www.justsecurity.org/134702/energy-security-national-security/ [https://perma.cc/2WLC-JMJ2].

[57] U.S. Chamber of Commerce, Comment Letter on Wind Turbines Section 232 Notice, Docket No. BIS-2025-0191 (Sept. 9, 2025), https://www.regulations.gov/comment/BIS-2025-0191-0015.

[58] United Steelworkers, Comment Letter on Wind Turbines Section 232 Notice, Docket No. BIS-2025-0191 (Sept. 9, 2025), https://www.regulations.gov/comment/BIS-2025-0191-0025.

[59] Zolan Kanno-Youngs, *Trump Seeks to Justify Ballroom as Security Measure*, NEW YORK TIMES (Mar. 31, 2026), https://www.nytimes.com/2026/03/31/us/politics/trump-ballroom-underground-security.html.

[60] Nandita Bose & Joseph Ax, *As Resistance Mounts, Trump Reaches for a Familiar Shield: National Security*, REUTERS (Sept. 22, 2026), https://www.reuters.com/legal/government/resistance-mounts-trump-reaches-familiar-shield-national-security-2026-09-22/; Luke Broadwater, John Ismay & Emily *Badger, Blocking Windmills? Banning Press? Building an Arch? Trump Cites National Security.* NEW YORK TIMES (Sept. 22, 2026), https://www.nytimes.com/2026/09/22/us/politics/trump-arch-national-security.html.

[61] *See* Erika Kranz, *A Legal Challenge with Major Implications for Citizen Suits,* HARVARD ENV'T & ENERGY LAW PROGRAM (June 16, 2026), https://eelp.law.harvard.edu/a-legal-challenge-with-major-implications-for-citizen-suits/.

a desire to make a public example" of a disfavored company, and "[t]he empty invocation of national security is not a blank check" for government action.[62]

Notably broad and novel tactics to promote coal and hinder wind

The administration's approach is also notable for the wide range of mechanisms it has used to preference coal and hinder wind development, several of which are entirely novel. As summarized in the table below, policies and actions (in some instances facilitated by Congress, rather than the administration alone) have adjusted permissible land uses, affected permitting and review, targeted specific facilities, adjusted financial incentives, offered project-specific funding, and changed environmental protections.

[62] Order on Cross Motions for Summary Judgment; Granting Motion to Supplement the Administrative Record, Anthropic PBC v. U.S. Dep't of War, No. 26-cv-01996 (N.D. Cal. Aug. 27, 2026), https://www.eff.org/document/anthropic-v-us-dept-war-order-cross-motions-summary-judgment.

Table 1. Summary by type of policy (each of these examples is described in the Appendix)

	Pro-Coal Examples	Anti-Wind Examples
Land use	Expanded areas available for leasing **(App. I.A.1)** Resource management plans that had limited leasing congressionally disapproved **(App. I.A.1)**	Withdrawal of offshore lands from leasing **(App. II.A)**
Policies to speed/slow leasing and permitting	Option for fast-tracked NEPA review **(App. I.B)**	DOI pauses authorization of new projects **(App. II.B)** DOD frozen wind project reviews **(App. II.C)** DOI requires high-level review of projects **(App. II.C)** DOI and U.S. Army Corps of Engineers preference high "capacity density" energy projects **(App. II.C)** Preventing access to planning database **(App. II.C)** Prohibiting incidental take permits under Bald & Golden Eagle Protection Act **(App. II.C)** Policy assuming offshore wind interference with other activities **(App. II.C)**
Facility-specific orders	Federal Power Act 202(c) orders to continue operation **(App. I.C)** Regional haze plans requiring shutdowns denied **(App. I.D)**	Stop-work orders **(App. II.D)** Permit reconsideration **(App. II.E)**
Financial incentives	Royalties decreased **(App. I.A.2)** Considering changing lease market value determination **(App. I.A.2)**	Tax incentives removed **(App. II.G.1)** Tariffs imposed, more threatened **(App. II.G.3)**
Project-specific funding	DPA and DOE funding for plant upgrades, new construction, export terminal **(App. I.F)**	Buyout deals to cancel offshore leases **(App. II.F)** Funding for wind-related infrastructure withdrawn/canceled **(App. II.G.2)**
Environmental statute application	Exemptions from MATS **(App. I.E.1)** Compliance deadline extensions and proposed weaker rules for coal ash and effluent **(App. I.E.2–3)** Repeal of greenhouse gas emission regulations for power plants; proposed no-authority determination **(App. I.E.4)**	

Of these, several are particularly novel. DOE's use of Federal Power Act emergency orders **(App. I.C)**, for instance, is unlike previous administrations' use of that authority, which had been confined almost exclusively to responding to threats caused by extreme weather events, with durations of just

days or weeks.[63] Never before has the authority been used to prevent plant retirements or with such long-lasting, open-ended duration. We have also found no past use of NEPA emergency authority similar to DOI's standing alternative arrangements that allow for fast-tracked review **(App. I.B)**. Although DOI's NEPA-implementing regulations include a provision for flexible reviews in the context of emergencies,[64] it is not clear how even the stated urgent need for additional energy production satisfies the description of emergency situations in that provision. Past uses were connected to disasters like wildfires and floods, and have not involved a forward-looking, opt-in process designated for particular projects aligned with an administration's priorities.[65] President Trump used a presidential exemption power never previously used to relieve coal plants from complying with the 2024 MATS rule **(App. I.E.1)**.[66] And the administration's agreements exchanging offshore wind lease terminations and large payments from the Judgment Fund in exchange for companies channeling money into preferred energy investments **(App. II.F)** likewise appear to have no historical analogue.

EPA's proposal to end all greenhouse gas regulation **(App. I.E.4)** for coal-fired power plants is also new. EPA has proposed determining, contrary to its legal conclusion in place since 2015 left undisturbed by the Supreme Court despite review of resulting rules, that it lacks authority under the Clean Air Act (CAA) to regulate greenhouse gas emissions from power plants.[67] Its September 2026 proposal tracks the no-authority conclusion reflected in its February 2026 rescission of the Endangerment Finding — its 2009 determination that greenhouse gas emissions cause or contribute to pollution that endangers human health or welfare. As EELP has explained in our legal analysis, EPA's new assertion is difficult to reconcile with the statutory text or with Supreme Court decisions about the scope of EPA's authority, and it reflects a bold new legal interpretation that, if courts endorse it, could prevent future administrations from using the CAA to regulate these emissions. At

[63] *See also* Michigan v. U.S. Dep't of Energy, No. 25-1159, slip op. at 35–36 (D.C. Cir. Sept. 11, 2026), https://law.justia.com/cases/federal/appellate-courts/cadc/25-1159/25-1159-2026-09-11.html ("Before 2025, DOE had issued Section 202(c) orders only at the request of local entities and to alleviate discrete crises, such as those caused by severe weather events or unexpected construction delays that required an immediate response."). For more discussion of these orders, their context as a response to President Trump's energy emergency declaration, and how they deviate from DOE's historical practice, *see* Erika Kranz, *One Year of Trump's 'Energy Emergency' in Context and in Court*, HARVARD ENV'T & ENERGY LAW PROGRAM (Jan. 21, 2026), https://eelp.law.harvard.edu/one-year-of-trumps-energy-emergency-in-context-and-in-court/; Alexandra B. Klass & Dave Owen, *The President and the Power Grid*, 125 MICH. L. REV. ONLINE 1 (2026), https://repository.law.umich.edu/mlr_online/vol125/iss1/1/.

[64] 43 C.F.R. § 46.150.

[65] *See* Erika Kranz, *One Year of Trump's 'Energy Emergency' in Context and in Court*, HARVARD ENV'T & ENERGY LAW PROGRAM (Jan. 21, 2026), https://eelp.law.harvard.edu/one-year-of-trumps-energy-emergency-in-context-and-in-court/.

[66] *See* Sarah Hart-Curran & Erika Kranz, *Evading Notice and Comment in the Second Trump Administration*, HARVARD ENV'T & ENERGY LAW PROGRAM (June 16, 2026), https://eelp.law.harvard.edu/evading-notice-and-comment-in-the-second-trump-administration/ (putting this novel action in context with other process-skipping tactics).

[67] Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111, 91 Fed. Reg. 59,002 (Sept. 17, 2026), https://www.federalregister.gov/d/2026-19072.

the moment, EPA's no-authority proposal is not final, but the agency has nonetheless repealed all greenhouse gas standards for existing coal-fired power plants.[68]

While the administration's use of DPA funds for upgrades of coal-fired power plants **(App. I.F)** is perhaps not as novel, the administration has taken an expansive view of its energy-related powers under the DPA in another context, signaling an openness to pushing past historical practice to promote favored energy sources. In March 2026, DOE issued a "Pipeline Capacity Prioritization and Allocation Order"[69] under the DPA to restart oil flow through a pipeline that had been unused for 10 years after its rupture caused a major oil spill along the California coastline in 2015.[70] The Department of Justice's Office of Legal Counsel released a memo stating the federal restart order would preempt the California laws that would otherwise impede the pipeline operator, Sable Offshore Corp., from resuming production and operating the associated pipeline infrastructure.[71] A federal district court recently denied California's request to preliminarily enjoin the order while the court considers California's arguments that the order is an invalid use of the DPA.[72] California has appealed that denial to the Ninth Circuit, where amici have explained that the pipeline order does not identify a military fuel shortfall, does not explain how restarting the pipeline would meet such a shortfall, and appears to be in service of the administration's energy policy agenda rather than a national defense interest.[73]

Courts will have opportunity to rule on the legality of several of these tactics, as discussed in the next section. To the extent that courts confirm that these tactics comply with applicable law, a future administration may choose to use similar levers to promote a different energy mix.

Early court responses to administration actions

Courts have ruled in several challenges to anti-wind actions, and more coal- and wind-related challenges are pending.[74]

One feature courts have identified as common to several efforts to slow wind development is that the administration has offered inadequate explanations for its actions or otherwise failed to comply with substantive legal requirements. In rejecting DOI's blanket pause on issuing authorizations

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[68] *See* Carrie Jenks & Erika Kranz, *EPA Repeals Power Plant Carbon Standards*, HARVARD ENV'T & ENERGY LAW PROGRAM (Oct. 8, 2026), https://eelp.law.harvard.edu/epa-repeals-power-plant-carbon-standards/ (analyzing both the final repeal of emissions standards and proposed no-authority determination).

[69] Press Release, U.S. Dep't of Energy, *Secretary Wright Directs Sable Offshore to Restore the Santa Ynez Unit and Pipeline* (Mar. 13, 2026), https://www.energy.gov/articles/secretary-wright-directs-sable-offshore-restore-santa-ynez-unit-and-pipeline [https://perma.cc/RA47-SX2D].

[70] Complaint at ¶ 36, California v. Wright, (C.D. Cal), No. 2:26-cv-3396 (Mar. 30, 2026).

[71] Preemptive Effect of Defense Production Act Order on State Law, 50 Op. O.L.C. (Mar. 3, 2026), https://www.justice.gov/olc/media/1429671/dl?inline [https://perma.cc/6KSE-8394].

[72] Civil Minutes- General, *California v. Wright,* No. 2:26-cv-03396 (C.D. Cal. Aug. 19, 2026).

[73] Brief of *Amici Curiae* Senator Sheldon Whitehouse and Other Members of Congress in Support of Plaintiff-Appellant and Reversal, California v. Wright, No. 26-5409 (9th Cir. Oct. 9, 2026), https://www.epw.senate.gov/public/_cache/files/e/2/e20f5b90-deb1-4d5a-8ccc-1b6b3d1c8e02/32512D3347A7BCC2E14DCFD93FF1C70BC478F9FF110891CE690EEFEC9D732F97.2026-10-09-whitehouse-brief-of-amici-curiae.pdf.

[74] More detail about pending challenges and court decisions is included in the appendix.

needed for wind projects **(App. II.B)**, for example, a federal district court ruled that DOI could not rely only on the president's direction to halt wind authorizations and instead must reasonably explain its exercise of discretion.[75] The court that preliminarily enjoined a suite of wind permitting slowdowns **(App. II.C)** likewise held that those actions were either inadequately considered or in violation of governing statutes.[76] The court that has ordered a restart to DOD review of onshore wind projects **(App. II.C)** held that the moratorium violated statutory requirements for DOD's review.[77] All of these courts also rejected the government's arguments that its actions were merely temporary pauses that did not amount to challengeable final agency actions.

In June 2026, a court rejected the Internal Revenue Service's arguments for changing a longstanding policy on when projects become eligible for tax credits, tightening requirements for wind and solar projects seeking clean energy tax credits. The court concluded that the agency failed to adequately explain its departure from its past policy or why it treated these types of projects differently from others **(App. II.G.1)**.[78]

The courts considering challenges to the offshore wind stop-work orders **(App. II.D)** have likewise determined that those plaintiffs were likely to succeed on the merits of their arguments that BOEM's explanations were inadequate or its actions were illegal, with some courts going as far as indicating that the government's purported national security basis appears pretextual — i.e., not the real reason for the decision. One observer noted that the administration is invoking national security arguments in so many contexts that "it has caused increased skepticism by the courts."[79] Courts have yet to rule in the challenges to DOI's wind lease buyout agreements **(App. II.F)**.

Most challenges regarding coal-related actions are at preliminary stages. But in September 2026, the D.C. Circuit ruled in the first of the pending challenges to DOE's Federal Power Act 202(c) orders **(App. I.C)**, striking down the order and rejecting DOE's expansive reading of its emergency powers.[80] The decision rests on the statute's text and structure as conferring on DOE only a limited role in resource planning: a role that does not "empower it to pick its preferred power sources in Michigan — or, presumably, any other state — and order them to operate without regard to the multiple

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[75] *See* Erika Kranz, *Federal Court Vacates Wind Energy Authorization* Pause, HARVARD ENV'T & ENERGY LAW Program (Dec. 16, 2025), https://eelp.law.harvard.edu/federal-court-vacates-wind-energy-authorization-pause/.

[76] Memorandum and Order, Renew Northeast v. U.S. Dep't of Interior, No. 25-cv-13961 (D. Mass. Apr. 21, 2026), https://www.govinfo.gov/content/pkg/USCOURTS-mad-1_25-cv-13961/pdf/USCOURTS-mad-1_25-cv-13961-0.pdf.

[77] Opinion and Order Denying Motion to Dismiss and Granting Motion for Preliminary Injunction, Renewable Northwest v. Hegseth, No. 3:26-cv-01092 (D. Or. Aug. 8, 2026), https://static.notus.org/5f/da/c21deea64225affc9576347f0a70/gov-uscourts-ord-194424-125-0-1.pdf (also holding that the plaintiffs had standing).

[78] Memorandum Opinion, Oregon Env't Council v. Internal Rev. Serv., No. 25-4400, slip op. (D.D.C. June 6, 2026), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2025cv4400-50.

[79] Jennifer McDermott, *Trump Administration Cites National Security to Stop Offshore Wind Development. Here's What to Know*, PBS (July 17, 2026), https://www.pbs.org/newshour/politics/trump-cites-national-security-to-stop-offshore-wind-development-heres-what-to-know [https://perma.cc/234P-DZE9].

[80] Opinion, Michigan v. U.S. Dep't of Energy, No. 25-1159, slip op. (D.C. Cir. Sept. 11, 2026), https://law.justia.com/cases/federal/appellate-courts/cadc/25-1159/25-1159-2026-09-11.html.

procedural and substantive constraints built into state reliability planning processes."[81] The decision serves as an early indication that even though this administration has attempted to use *Loper Bright v. Raimondo* — a 2024 Supreme Court decision that limited deference to agency interpretations of ambiguous statutes[82] — as support for swift deregulatory action,[83] *Loper Bright* can also constrain the administration's efforts to use emergency (or other) authorities in ways that extend past what statutory text supports.[84]

A court may also soon rule on the government's motion to dismiss a challenge about the president's energy emergency declaration and certain agency implementing actions. These forthcoming decisions will provide early signals of how courts are assessing the administration's linking of energy and national security and its novel and expansive use of emergency authorities and statutory exemptions.

Practical implications of pro-coal and anti-wind efforts

Although the full scope of effects of the administration's actions is unknown, some effects are clear: anti-wind policies have been destabilizing for the industry, have complicated states' efforts to meet clean energy goals, and have created challenges for a future administration that may seek to rebuild courts' and the public's trust in government decision-making.

Energy prices and development trends

Though it is difficult to assess the long-term implications of the Trump administration's coal- and wind-related actions, research organizations and think tanks are beginning to model potential energy costs, public health costs, and grid reliability implications of the administration's energy policies.

The Trump administration has stated that its goal is to provide "abundant, affordable energy,"[85] but analyses project that its policies will lead to higher energy costs, public health harms, and decreased clean energy generation instead.[86] Meanwhile, economics and market dynamics remain key factors

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[81] *Id.* at 6.

[82] Loper Bright v. Raimondo, 603 U.S. 369 (2024).

[83] Office of Management and Budget, Office of Information and Regulatory Affairs, Memorandum: Guidance Implementing the President's Memorandum Directing the Repeal of Unlawful Regulations, M-25-28 (May 7, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-28-Guidance-Implementing-the-Presidents-Memorandum-Directing-the-Repeal-of-Unlawful-Regulations.pdf [https://perma.cc/U3DC-VJ22] (urging agencies use *Loper*, among other recent decisions, to declare existing regulations unlawful and to repeal them without notice and comment); Office of Management and Budget, Office of Information and Regulatory Affairs, Memorandum: Streamlining the Review of Deregulatory Actions, M-25-36 (Oct. 21, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/10/M-25-36-Streamlining-the-Review-of-Deregulatory-Actions.pdf [https://perma.cc/X3MB-67UB] (same).

[84] Michigan v. U.S. Dep't of Energy, No. 25-1159, slip op. at 33 (D.C. Cir. Sept. 11, 2026), https://law.justia.com/cases/federal/appellate-courts/cadc/25-1159/25-1159-2026-09-11.html (citing *Loper Bright* for the idea that the statutory text and structure resolve the limits of DOE's authority).

[85] Press Release, U.S. Dep't of Interior, *Interior Unleashes American Coal Power in Bold Move to Advance Trump Administration Priorities* (Sept. 29, 2025), https://www.doi.gov/pressreleases/interior-unleashes-american-coal-power-bold-move-advance-trump-administration [https://perma.cc/KHQ2-GTBS].

[86] JENKINS, JESSE, JAMIL FARBES & BEN HALEY, IMPACTS OF THE ONE BIG BEAUTIFUL BILL ON THE US ENERGY TRANSITION – SUMMARY REPORT (July 2025), https://zenodo.org/records/15801701 [https://perma.cc/853K-BPV7] (estimating an increase in average U.S. household energy costs by roughly $165 per household per year in

in developers' and utilities' choices about what energy projects to develop and what energy sources to tap.[87]

Economics may also explain why administration efforts to increase coal mining have met limited success — at least so far. By January 2026, BLM reported that it had newly leased about 24,000 acres through four sales, was considering new or expanded coal leasing in the Powder River Basin in Montana and Wyoming, and was planning other new coal lease sales and exploration projects.[88] Yet other lease sales had received no viable bids, with indications that market forces making other energy sources more economical had decreased demand for coal, at least domestically.[89] Before 2025, the most recent lease sales occurred in 2021; although BLM manages hundreds of millions of acres where the coal mineral estate is owned by the federal government, the total acreage leased is around 400,000 acres, which has declined relatively steadily over the last several decades.[90]

Longer term, however, the impact of the administration's policies may be more extensive. With the phase-out of tax credits for renewables **(App. II.G.1)** and injection of funding for and other

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2030 and over $280 per household per year in 2035); AN AFFORDABILITY CRISIS OF TRUMP'S MAKING, NRDC at 2 (Aug. 2026), https://www.nrdc.org/sites/default/files/2026-08/Affordability_Crisis_IB_26-08-B_04_locked.pdf [https://perma.cc/K6WX-VHXT] (estimates the increased air pollution from fossil fuel emissions could increase health-care spending by up to $1.7 billion per year); *Economic, Consumer Cost, and Pollution Impacts of Federal Energy Policy Changes*, ENERGY INNOVATION (July 2026), https://energyinnovation.org/report/economic-consumer-cost-and-pollution-impacts-of-federal-energy-policy-changes/ [https://perma.cc/E5YX-FWPR] (estimating that between 2026 and 2040, households will pay an additional $650 billion for energy and reporting modeling that Trump's policies slowing down electrification and domestic energy manufacturing will result in trillions of dollars in lost GDP from 2026 to 2040); TOM TAYLOR & RACHEL REOLFI, AN INFLECTION POINT FOR THE U.S. POWER SECTOR (Oct. 2026), https://library.edf.org/AssetLink/0e8463b42p250j55k2b5f03qk61t64jy.pdf (projecting slowed growth of clean power and increased energy costs for consumers).

[87] RHODIUM GROUP, TAKING STOCK 2026: US ENERGY AND EMISSIONS OUTLOOK (July 29, 2026), https://rhg.com/research/taking-stock-2026/ (reporting some models anticipate "record levels of solar and storage deployment in 2026 and 2027" due in part to "a combination of rushing to claim expiring tax credits alongside the urgent need for more capacity on the grid"); Benjamin Storrow, *Trump Tried to Kill Renewables. They're Growing Anyway.* E&E NEWS (July 13, 2026), https://www.eenews.net/articles/trump-tried-to-kill-renewables-theyre-growing-anyway/ (reporting growth in renewable energy generation and decline in coal generation in first half of 2026).

[88] *Progress on Public Lands: BLM 2025 Trump Administration Accomplishment January 20–December 31, 2025*, BUREAU OF LAND MANAGEMENT (Jan. 6, 2026), https://www.blm.gov/blog/2026-01-06/progress-public-lands-blm-2025-trump-administration-accomplishments-jan-20-Dec-31-2025. In contrast to this relatively small amount of leasing, BLM announced that it had opened more than 13 million acres of new lands for coal leasing. *Id.*

[89] *See, e.g.*, James Bikales, *BLM Rejects Only Bid in Montana Coal Lease Sale, Postpones Wyoming Auction*, E&E NEWS (Oct. 10, 2025), https://www.eenews.net/articles/blm-rejects-only-bid-in-montana-coal-lease-sale-postpones-wyoming-auction/; Matthew Brown, *US Rejects Coal Lease Bid on Utah Public Lands as Western Sales Fall Flat*, ASSOCIATED PRESS (Oct. 16, 2025), https://apnews.com/article/trump-coal-lease-sales-rejected-3c1588816b6543f15d513f91c75c6f8c.

[90] *Coal Data, National Coal Statistics,* BUREAU OF LAND MGMT., https://www.blm.gov/programs/energy-and-minerals/coal/coal-data (last accessed Oct. 14, 2026) (linking statistics showing acreage leased by year).

preferential treatment of coal, the economics of different types of power production will change, perhaps with lasting and deferred effects.[91]

Indeed, observers and wind developers have explained that at a minimum, the administration's wind-targeting actions have created uncertainty that may disincentivize companies that would seek to bring new energy onto the grid. The offshore stop-work orders **(App. II.D)** "undermine the faith of project developers of any energy resource in the credibility of federal government decisions."[92] As one wind developer explained, "Besides wasting time and money and imperiling livelihoods, the Suspension Order fundamentally undermines the public interest in a predictable government permitting process that the private sector can rely on in making large investments in the U.S. economy, including potentially undermining the willingness of large banks to provide necessary financing for complex infrastructure projects, not just for renewable energy projects, but for oil and gas developments and other infrastructure too."[93] A recent slate of permit remands and reconsiderations **(App. II.E)** injects similar uncertainty that may threaten future investment.

Implications for states, Congress, and future administrations

These actions have consequences for states as well. For example, eight East Coast states have committed to building more than 45 gigawatts of offshore wind by 2040 and have made large investments in the infrastructure needed to make that a reality.[94] So far, states have acknowledged that the administration's actions may cause them to miss targets over the next 5 to 10 years, but their longer-term goals and mandates remain intact.[95] But states have also indicated that administration actions — such as lease cancellations and permitting slowdowns — make their targets more difficult to reach.[96]

The uncertainty created by pauses, slowdowns, and stop-work orders is reflected in the permitting reform debates in Congress. Supporters of the recently proposed Bipartisan American Affordability

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[91] *See* TOM TAYLOR & RACHEL REOLFI, AN INFLECTION POINT FOR THE U.S. POWER SECTOR (Oct. 2026), https://library.edf.org/AssetLink/0e8463b42p250j55k2b5f03qk61t64jy.pdf [https://perma.cc/CC5N-UK36] (analyzing early signs of influence of recent policy changes through the second quarter of 2026).

[92] Seth Feaster & Dennis Wamsted, *Offshore Wind Stop-Work Orders are Costing Consumers, Delaying Deeded Energy*, INSTITUTE FOR ENERGY ECONOMICS AND FINANCIAL ANALYSIS (Jan. 28, 2026) https://ieefa.org/resources/offshore-wind-stop-work-orders-are-costing-consumers-delaying-needed-electricity [https://perma.cc/863J-CKM5].

[93] Empire Wind's Motion for Preliminary Injunction at 45, Empire Leaseholder LLC v. Burgum, No. 1:26-cv-00004 (Jan. 6, 2026).

[94] Alex Brown, *Offshore Wind Faces New Headwinds. States Aren't Giving Up*, GOVERNING (July 7, 2026), https://www.governing.com/infrastructure/offshore-wind-faces-new-headwinds-states-arent-giving-up [https://perma.cc/SSU7-QZH2].

[95] *Id.*

[96] *See, e.g.*, Complaint, New York v. U.S. Dep't of Interior, No. 1:26-cv-01910, at 4 (D.D.C. June 2, 2026) (explaining how New York and New Jersey relied on the wind project to be developed on a now-canceled lease "as a component of their respective long-term strategies to support grid reliability, energy diversification, and climate goals"); Opinion, New York v. Trump, No. 1:25-cv-11221, slip op. at 10 (D. Mass. Dec. 8, 2025), https://www.climatecasechart.com/documents/massachusetts-federal-court-ruled-that-federal-pause-on-wind-energy-authorizations-was-unlawful_a00b (recognizing that the administration's wind authorization pause had caused states to incur costs as they had to shift to other energy sources to meet renewable energy commitments, plus other harm to states).

and Jobs Act[97] have framed the legislation as a way to prevent permitting delays, unwarranted permit denials or suspensions, and unfair treatment of politically disfavored energy projects. Others have commented that the bill is not certain to achieve these goals, does not fully prevent the anti-wind actions already taken by the administration, and undercuts the authorities to protect the environment and tribal interests. And announcements related to permitting of offshore wind facilities have continued **(App. II.E)** even as Congress evaluates the legislation.[98]

More generally, although courts have recognized some limits, the administration's frequent use of exemptions and emergency powers has raised questions about whether Congress should act to more explicitly circumscribe a president's statutory authority or provide clear avenues for judicial review of claims of national security.[99]

Legal questions remain about the reversibility of certain actions. For example, the Congressional Research Service notes that the Outer Continental Shelf Lands Act section on which President Trump's withdrawal **(App. II.A)** relied does not contain any provision about revoking a withdrawal, so the legal pathway to restarting offshore wind leasing in the future is uncertain unless Congress acts.[100] And EPA's proposal to adopt a limited legal interpretation of its authority under the CAA to regulate greenhouse gas emissions from fossil fuel-fired power plants **(App. I.E.4)** would, if adopted by courts, restrict a future administration from adopting a different statutory interpretation and would require congressional action to give the agency that authority.

Courts' skepticism, litigants' opportunities, rebuilding challenges

While individual agency decisions cannot be set aside simply because they are part of a broadly inconsistent and incoherent government-wide approach to energy policy, the inconsistency inherent in the administration's allegedly "all-of-the-above" energy policy — which, if genuine, would not directly, broadly, and explicitly inhibit wind energy development — may give courts reason to doubt whether agencies' energy-related explanations are reasonable. An agency action is ordinarily "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise."[101] Agency actions that do not reasonably explain how they address the problems they are intended to solve do not meet this standard.

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[97] Bipartisan American Affordability and Jobs Act of 2026, S. 5653, 119th Cong. (2026).

[98] *See* Josh Siegel, *Permitting Reform: Washington's Elusive Bipartisan Dream*, POLITICO (May 23, 2026), https://www.politico.com/news/2026/05/23/permitting-reform-congress-elusive-00934630; Benjamin Storrow & Kelsey Tamborrino, *'This is how you blow up a permitting deal': Sen. Whitehouse slams Trump over offshore wind*. POLITICO (Oct. 21, 2026), https://www.politico.com/news/2026/10/21/sen-whitehouse-says-wind-attacks-threaten-permitting-deal-01129055.

[99] *See, e.g.*, Ben Diamond, *One Emergency After Another*, LAWFARE (Apr. 14, 2026), https://www.lawfaremedia.org/article/one-emergency-after-another [https://perma.cc/GFU3-8T7Y].

[100] CORRIE E. CLARK, LAURA B. COMAY & DONALD J. MARPLES, CONG. RSCH. SERV., IF13034, OFFSHORE WIND: STATUS AND ISSUES FOR THE 119TH CONG. (Oct. 8, 2026), https://www.congress.gov/crs-product/IF13034.

[101] *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins.*, 463 U.S. 29, 43 (1983).

Inconsistency in energy policy may also lead courts to question whether agencies' proffered explanations are genuine. Indeed, courts have already questioned agencies' rationales in several wind-related disputes and in other areas where the administration has cited national security in novel ways.[102] This is part of a broader pattern of courts expressing distrust of the federal government's factual representations rather than taking officials and agencies at their word.[103] This erosion of trust may make challenges to Trump administration actions easier to win — as courts may more deeply probe official motivations and rationales, even allowing discovery into agency deliberations in cases where courts' review is ordinarily confined to the administrative record designated by the agency defendant in a lawsuit. But it may also be difficult for a future administration to regain the trust that has been lost.[104]

Inconsistency and concerns about pretext also threaten public trust in government decision-making. As one scholar has observed, "pretext . . . evades accountability by obstructing an effective response to the actual grounds for the decision. It undermines confidence in the decision because the explanation in fact is not the actual basis for the determination."[105] But where courts "insist[] that major policy decisions be justified in a manner that does not obscure the decisionmakers' reasons, courts can help citizens to judge their leaders accurately and to modify their own attitudes toward those leaders accordingly."[106]

EELP will continue watching this area, assessing how the administration's efforts, courts' rulings, and Congress's responses define the range of tools future administrations may lawfully use to shape the United States' energy mix.

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[102] *See* JAY DUFFY & JONAS MONAST, THE EXECUTIVE POWER-GRAB PLAYBOOK: IDENTIFYING A LITIGATION STRATEGY TO DEFEND STATE AUTHORITY (Sept. 2026), https://ridgelinecenter.org/wp-content/uploads/2026/09/2026_PowerGrabPlaybook.pdf [https://perma.cc/3BXB-BAGZ].

[103] *See* Jordan Asher, *What the Presumption of Regularity's Erosion Means for Challenges to Executive Action*, JUST SECURITY (Sept. 1, 2026), https://www.justsecurity.org/155321/presumption-regularity-erosion-challenges-executive-action/ [https://perma.cc/XR3U-YZXD] (citing the organization's tracker that had, as of March 2026, identified 90 cases in which courts expressed such distrust); Erika Kranz, *When Government Gets It Right: A Framework for Assessing When Agencies Deserve a Presumption of Regularity*, HARVARD ENV'T & ENERGY LAW PROGRAM (July 23, 2025), https://eelp.law.harvard.edu/when-government-gets-it-right-a-framework-for-assessing-when-agencies-deserve-a-presumption-of-regularity/.

[104] *See* Jordan Asher, *What the Presumption of Regularity's Erosion Means for Challenges to Executive Action*, JUST SECURITY (Sept. 1, 2026), https://www.justsecurity.org/155321/presumption-regularity-erosion-challenges-executive-action/ [https://perma.cc/XR3U-YZXD] (flagging both opportunities for litigants and that "Judges reviewing the actions of a future administration might retain an increased willingness to set the presumption of regularity aside.").

[105] Robert N. Weiner, *Pretext, Reality, and Verisimilitude: Truth-Seeking at the Supreme Court,* 56 U. MICH. J. L. REFORM 385, 433 (2023), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2575&context=mjlr.

[106] Benjamin Eidelson, *Reasoned Explanation and Political Accountability in the Roberts Court*, 130 YALE L.J. 1748, 1826 (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3790791.

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APPENDIX: Example Pro-Coal and Anti-Wind Actions During the Second Trump Administration, Agency Explanations, Legal Challenges, and Judicial Responses

I. Pro-Coal Actions

A. Policies promoting use of public lands for coal leasing and development

1. Restarted federal coal leasing and nullified resource management plans

In April 2025, the Bureau of Land Management (BLM) announced that it would formally end a moratorium on coal leasing initially imposed during the Obama administration.[107] That threshold action was the first of several intended to expand or encourage coal leasing.

The One Big Beautiful Bill Act (OBBBA), passed at the president's request and signed into law in July 2025, mandates increased availability for coal mining on federal lands and streamlines federal reviews of coal leases. In September 2025, BLM announced that it was opening up 13.1 million acres of federal lands for coal leasing in Montana, Wyoming, Tennessee, and beyond, "tripling the benchmarks set by the landmark [OBBBA]."[108] BLM stated that "Interior's actions reflect the Trump administration's all-of-the-above energy strategy, ensuring abundant, affordable energy while reducing reliance on foreign sources of coal and minerals."[109]

Congress has also aided the administration's efforts to open lands to coal leasing beyond OBBBA. In fall 2025, Congress used the Congressional Review Act to disapprove three resource management plans for certain lands under BLM authority that had restricted coal leasing.[110] Resource management plans are foundational BLM planning documents subject to public comment and environmental review; they form the basis of individual agency decisions for covered lands over many years. The congressionally vetoed plans — covering lands in North Dakota, Montana, and Wyoming — had limited new coal leasing, including in the Powder River Basin, an area that contains large quantities of coal; with those plans now rendered nullities, coal leasing may begin in those areas again.

2. Reduced federal coal royalties; other potential price adjustments

The administration has also made changes that affect the economics of coal industry leasing and production. As directed by OBBBA, the Department of the Interior (DOI) reduced the royalty rate for

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[107] Press Release, *Department of the Interior Moves to Restore Coal Industry* (Apr. 8, 2025), https://www.doi.gov/pressreleases/department-interior-moves-restore-coal-industry [https://perma.cc/F5YA-267Y]. That moratorium was withdrawn during the first Trump administration and then left in limbo after action by the Biden administration and judicial decisions.

[108] Press Release, U.S. Dep't of Interior, *Interior Unleashes American Coal Power in Bold Move to Advance Trump Administration Priorities* (Sept. 29, 2025), https://www.doi.gov/pressreleases/interior-unleashes-american-coal-power-bold-move-advance-trump-administration [https://perma.cc/KHQ2-GTBS].

[109] *Id.*

[110] Resource management plans have not previously been viewed as "rules" subject to the Congressional Review Act and BLM had not previously sent them to Congress for review under the Act. That changed in 2025, when Congress requested a new opinion from the Government Accountability Office, which agreed the plans are subject to congressional review; that opinion created a new opportunity for Congress to veto the plans, which it quickly did. *See* Sarah Hart-Curran, *The Congressional Review Act in 2025: Expanding Use and Emerging Questions*, HARVARD ENV'T & ENERGY LAW PROGRAM (Feb. 5, 2026), https://eelp.law.harvard.edu/the-congressional-review-act-in-2025-expanding-use-and-emerging-questions/.

federal coal from 12.5 percent to no more than 7 percent until 2034.[111] That reduced rate means coal producers will pay the federal government a smaller percentage of the value of federal coal mined, reducing costs for producers and income for the government. DOI is also reportedly reviewing how it calculates the "fair market value of coal" for lease sale purposes, which is the minimum price the government may accept to lease its minerals to developers.[112] A lower price floor could spur more bids by allowing developers to pay less for access to federal coal.

B. Fast-tracked NEPA review for certain energy projects

In April 2025, DOI announced new "emergency permitting procedures" under the National Environmental Policy Act (NEPA) that it would apply to energy projects as defined in the president's day-one energy emergency declaration.[113] These new procedures invoke a rule that allows DOI "to take urgently needed actions" either "before preparing an environmental document" or upon using "alternative arrangements" for preparation of such a document if "the Responsible Official determines that an emergency exists that makes it necessary to take actions to address imminent threats to life, property, or important natural, cultural, or historic resources before preparing an environmental document."[114] Like the "energy emergency" declaration, DOI's "alternative arrangements" for energy-related projects applies to coal (in addition to oil, gas, geothermal, hydroelectric, and critical minerals projects), but not wind or solar.[115] Project applicants can opt into a fast-tracked NEPA review process that accelerates the timeline to just 14–28 days, rather than 1–2 years.[116]

Few applicants have chosen this expedited process, but one instance involves coal. DOI's Office of Surface Mining and Reclamation Enforcement deployed its "alternative arrangements" to prepare an environmental impact statement in just 28 days for an expansion of the Black Butte coal mine in Wyoming, which will allow the leaseholder to extract more than 9 million tons of federal coal.[117] The agency took scoping comments, but it did so without publishing any draft analysis to which the public

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[111] Revision to Regulations Regarding Coal Management Provisions and Limitations; Fees, Rentals, and Royalties, 90 Fed. Reg. 36122 (Aug. 1, 2025), https://www.federalregister.gov/d/2025-14623.

[112] Hannah Northey, *Zeldin Vows to Fulfill Coal Industry's 'Wish List.'* E&E NEWS (July 21, 2026), https://www.eenews.net/articles/zeldin-vows-to-fulfill-coal-industrys-wish-list/ [https://perma.cc/4L8A-MZ6T].

[113] Press Release, U.S. Dep't of Interior, *Department of the Interior Implements Emergency Permitting Procedures to Strengthen Domestic Energy Supply* (Apr. 23, 2025), https://www.doi.gov/pressreleases/department-interior-implements-emergency-permitting-procedures-strengthen-domestic [https://perma.cc/3KDG-3W6S].

[114] 43 C.F.R. § 46.150. Although DOI rescinded nearly all its NEPA-implementing procedures in July 2025, it retained certain provisions that allow for streamlined review. The regulation does not define "emergency" beyond its context in the provision quoted above.

[115] U.S. Dep't of Interior, Alternative Arrangements for NEPA Compliance (Apr. 23, 2025), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf [https://perma.cc/R5T3-QHZE].

[116] *See* 42 U.S.C. §§ 4336a(g)(1)(A), (B).

[117] Office of Surface Mining Reclamation and Enforcement, Black Butte Coal Company Federal Coal Lease WYW-6266 Mining Plan Modification, Environmental Impact Statement (Sept. 9, 2025), https://www.osmre.gov/sites/default/files/inline-files/BlackButte_Emergency_EIS_9.9.25_signed.pdf.

could react,[118] and the response to these comments in the resulting environmental impact statement is brief.[119] Similarly, although the agency reported that it consulted with local Tribes, its discussion of their input is thin.[120]

DOI offered no explanation of its own for adopting the alternative arrangements for administration-favored energy projects beyond citing the president's energy emergency declaration.[121] The Council on Environmental Quality, which reviewed the proposal, likewise offered no independent analysis, stating only that it "concurs with Interior's determination that the procedures it proposes to observe with respect to energy-related actions that it determines are necessary and appropriate responses to the declared energy emergency are an appropriate means of complying with NEPA's requirements."[122]

In January 2026, a coalition of states that had challenged a suite of agency actions implementing President Trump's energy emergency order added a claim alleging that DOI unlawfully invoked emergency authority to fast-track energy project approvals under the guise of "emergency permitting procedures," even though no qualifying emergency existed as defined by DOI's NEPA-implementing regulations.[123] The federal government has moved to dismiss that complaint, so briefing on the merits of the claims has not yet begun.

C. Federal Power Act section 202(c) orders preventing power plant retirements

Since May 2025, the Department of Energy (DOE) has used Federal Power Act emergency authority in unprecedented ways to delay the closure of coal-fired plants (and an oil/gas-fired plant) through a series of 90-day orders. Citing section 202(c) of that Act, which authorizes emergency action in certain situations,[124] DOE has ordered coal plants in Michigan, Indiana, Colorado, Washington, and

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[118] Press Release, U.S. Dep't of Interior, *Trump Administration Accelerates Review of Black Butte Mine Expansion in Bold Step for Energy Security* (Aug. 12, 2025), https://www.doi.gov/pressreleases/trump-administration-accelerates-review-black-butte-mine-expansion-bold-step-energy [https://perma.cc/F67J-ZLTV].

[119] Office of Surface Mining & Reclamation Enforcement, Black Butte Coal Company Federal Coal Lease WYW-6266 Mining Plan Modification, Environmental Impact Statement, Appendix F (Sept. 9, 2025), https://www.osmre.gov/sites/default/files/inline-files/BlackButte_Emergency_EIS_9.9.25_signed.pdf.

[120] *Id.* at 120.

[121] U.S. Dep't of Interior, Alternative Arrangements for NEPA Compliance (Apr. 23, 2025), https://www.doi.gov/sites/default/files/documents/2025-04/alternative-arrangements-nepa-during-national-energy-emergency-2025-04-23-signed_1.pdf [https://perma.cc/R5T3-QHZE].

[122] Letter from Katherine R. Scarlett, Chief of Staff, Council on Environmental Quality, to Karen Budd-Falen, Acting Deputy Secretary, U.S. Dep't of Interior (Apr. 23, 2025), https://www.whitehouse.gov/wp-content/uploads/2025/04/CEQ-to-DOI-re-Alternative-Arrangement_04.23.25.pdf [https://perma.cc/Q3BR-CQCU].

[123] First Amended and Supplemental Complaint, Washington v. Trump, No. 2:25-cv-00869 (W.D. Wash. Jan. 30, 2026), https://oag.ca.gov/system/files/attachments/press-docs/Amended%20Complaint_0.pdf [https://perma.cc/S5FM-M7L7]. For more analysis of the NEPA alternative arrangements, *see* Erika Kranz, *One Year of Trump's 'Energy Emergency' in Context and in Court*, HARVARD ENV'T & ENERGY LAW PROGRAM (Jan. 21, 2026), https://eelp.law.harvard.edu/one-year-of-trumps-energy-emergency-in-context-and-in-court/.

[124] 16 U.S.C. 824a(c)(1) (authorizing emergency orders where "an emergency exists by reason of" four specific circumstances: a "sudden increase in the demand for electric energy," a "shortage of electric energy," a

Florida to be continually available for operation, notwithstanding their previously planned retirement dates. Challengers have pointed out the heavy pollution emitted by and high costs of operating these plants. The Campbell coal plant in Michigan, for instance, reportedly costs more than $575,000 per day to keep running, and those costs are likely to be borne by ratepayers through rate recovery.[125]

DOE's explanations for these orders have shifted over time — DOE's first, issued in May 2025 for the Campbell plant, cited anticipated potential for capacity shortfalls in summer months, particularly in August 2025.[126] More recent Campbell plant orders, such as that from May 2026, instead asserted that adequacy concerns are "year-round," referencing increasing demand particularly caused by the energy demands of data centers, retirements of other generation facilities in recent years, and the slow predicted construction of new gas turbines.[127]

States, environmental and consumers organizations, and in one instance a plant operator have sought rehearing before DOE, arguing among other things that the orders exceed DOE's statutory authority because (1) the orders do not establish that an "emergency" within the meaning of Federal Power Act section 202(c) exists; (2) the orders are otherwise not reasonably explained or supported by substantial evidence; (3) the orders do not "best meet the emergency and serve the public interest" as the statute requires; (4) the orders fail to ensure that operations of plants under the orders are consistent with applicable environmental laws to the maximum extent possible and adverse impacts are minimized; and (5) the agency violated NEPA by failing to first assess the environmental consequences of that action.[128] In one instance, a plant owner argued the order requiring the plant to continue operations constituted an uncompensated taking under the Fifth Amendment, violated its rights under the Due Process Clause, is based on speculative concerns rather than a real emergency, and is otherwise unreasonable and beyond DOE's statutory powers.[129]

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shortage "of facilities for the generation or transmission of electric energy," or a shortage of "fuel or water for generating facilities").

[125] Motion to Intervene and Request for Rehearing and Stay, Federal Power Act Section 202(c) Emergency Order: Midcontinent Independent System Operator (MISO), Order No. 202-26-22 (June 16, 2026), https://www.energy.gov/documents/motion-intervene-and-request-rehearing-and-stay-public-interest-organizations [https://perma.cc/K9YS-LDBV].

[126] Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-25-3 (May 23, 2025), https://www.energy.gov/ceser/federal-power-act-section-202c-midcontinent-independent-system-operator-miso [https://perma.cc/2T3R-S3HB].

[127] *See* Federal Power Act Section 202(c): Midcontinent Independent System Operator (MISO), Order No. 202-26-22 (May 19, 2026), https://www.energy.gov/documents/doe-202c-order-no-202-26-22-midcontinent-independent-system-operator-miso [https://perma.cc/HB2A-95MC].

[128] *See, e.g.,* Motion to Intervene and Request for Rehearing and Stay, Federal Power Act Section 202(c) Emergency Order: Stanton Energy Center, Order No. 202-26-26 (July 2, 2026), https://www.energy.gov/documents/7226-doe-order-no-202-26-26-stanton-rehearing-request [https://perma.cc/VQ8E-SVG6].

[129] Request for Rehearing, Federal Power Act Section 202(c) Emergency Order: Craig, Order No. 202-26-21 (Apr. 29, 2026), https://www.energy.gov/documents/request-rehearing-tri-state-generation-and-transmission-association-and-platte-river [https://perma.cc/3NAA-SMNX].

DOE has denied all requests for administrative reconsideration, and several challenges have been filed in federal courts of appeals.[130]

The D.C. Circuit ruled against DOE in the first of those challenges on September 11, 2026, in consolidated challenges regarding the original Campbell coal plant order.[131] The court held that DOE had exceeded its authority under the Federal Power Act when issuing an order requiring the coal plant to continue operating. Section 202(c), the court held, gives DOE emergency powers "triggered only when there is a need for immediate, essentially last-resort action *and* the circumstances require action by DOE in particular, as opposed to action by the state or states responsible for resource adequacy."[132] The court emphasized the statute's structure that makes clear that other measures led by states and utilities are the primary tools for preventing and responding to foreseen electricity shortfalls.[133] DOE's historical practice of using its emergency powers sparingly reinforces the conclusion based on the statute's text and structure that section 202(c) is "a last resort," and not a "vast, top-down emergency power to pick its favorite generators to run at all costs," the court explained.[134] Moreover, DOE's new use of the statute had practical consequences: DOE's new "reading of 'emergency' invites frequent federal interventions that are unsupported by the statute and threaten the stability of the energy market" and that override states' and regional transmission organizations' resource planning aimed at "serv[ing] the public interest in affordable, environmentally sound, reliable resources going forward."[135] Because the circumstances DOE identified in its Campbell coal plant order were not "facially sufficient to meet the statutory requirement of an emergency"[136] and DOE had no "serious possibility" of being able to better explain its order on remand, the court vacated the order.[137]

Several other challenges have been held in abeyance awaiting a decision in the first Campbell case; meanwhile, DOE has continued to issue 202(c) emergency orders every 90 days for each affected plant.[138] We will soon see if other courts quickly adopt the D.C. Circuit's reasoning. We also await indication whether DOE intends to seek Supreme Court review of the decision.

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[130] For a list of administrative challenges and pending cases, *see Challenges to DOE 202(c) Orders*, STATE POWER PROJECT, https://statepowerproject.org/challenges-to-doe-202c-orders/ [https://perma.cc/KU8P-HBC9] (last accessed Oct. 22, 2026).

[131] Opinion, Michigan v. U.S. Department of Energy, No. 25-1159, slip op. (D.C. Cir. Sept. 11, 2026), https://law.justia.com/cases/federal/appellate-courts/cadc/25-1159/25-1159-2026-09-11.html.

[132] *Id.* at 30.

[133] *Id.* at 5, 31.

[134] *Id.* at 32, 33, 35–36.

[135] *Id.* at 32–33.

[136] *Id.* at 36.

[137] *Id.* at 39.

[138] *See generally DOE's Use of Federal Power Act Emergency Authority: 202(c) Orders Issued to Date*, U.S. DEPT OF ENERGY, https://www.energy.gov/ceser/does-use-federal-power-act-emergency-authority [https://perma.cc/H4ZB-BDYU] (repository of information on each DOE 202(c) order, including rehearing requests).

D. Rejection of regional haze plans that incorporated required power plant retirements

The federal government has also extended the life of coal-fired electric generating units using a Clean Air Act (CAA) mechanism. In 2026, the Environmental Protection Agency (EPA) took actions under the CAA's Regional Haze Rule, preventing plants from closing by rejecting state plans that reflected planned unit closures.

Under the Regional Haze Rule, states must submit state implementation plans (SIPs) to EPA, describing how the state will make "reasonable progress" toward national haze reduction goals, generally accomplished by requiring tighter emissions limits on the sources of pollution contributing to haze.[139] Under longstanding EPA guidance, states may also rely on closure dates for pollution sources, such as electric generating units, to show required "reasonable progress."[140] Once EPA approves a state plan that relies upon a closure date, that date becomes enforceable. Companies often volunteer to include their planned source retirements as enforceable shutdown dates in regional haze SIPs to avoid adopting more stringent haze controls — such as tighter emissions limits — that may not be cost-effective, particularly for older units nearing the end of their expected lives.[141] EPA previously allowed the practice, but in 2026, the administration reversed course and rejected state plans that relied on closure dates companies had initially agreed to.

When drafting its most recent regional haze SIP revision, Colorado included an enforceable 2029 closure date for a coal-fired electric generating unit owned by Colorado Springs Utilities.[142] The utility had first volunteered to include this enforceable closure date in Colorado's SIP revision in 2020,[143] but in March 2025, the utility withdrew its consent to close the unit, citing unforeseen difficulties in

[139] *See* 40 C.F.R. § 51.308(f). For a detailed breakdown of the components of 40 C.F.R. § 51.308(f) and the process that states follow to draft their regional haze SIP revisions, *see* Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31,926, 31,929–31 (July 16, 2025), https://www.federalregister.gov/d/2025-13342.

[140] *See* U.S. Env't Prot. Agency, Guidance on Regional Haze State Implementation Plans for the Second Implementation Period, at 33–34 (Aug. 20, 2019), [https://perma.cc/Z4EY-9EMS].

[141] *See, e.g.*, Colo. Air Pollution Control Div., Comment Letter on Proposed Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, at 16, Docket No. EPA-R08-OAR-2024-0607-0059 (Sept. 15, 2025), https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0059 (explaining how several facilities in Colorado volunteered for enforceable retirement dates as a more cost-effective alternative to installing additional emissions controls); Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Hawaii; Regional Haze State Implementation Plan for the Second Implementation Period, 91 Fed. Reg. 31,941, 31,942 (May 29, 2026), https://www.federalregister.gov/d/2026-10754 (explaining that Hawaiian Electric chose to close electric generating units to avoid "the high costs of controls and fuel switches" that may otherwise be required).

[142] *See* Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 90 Fed. Reg. 31,926, 31,934 (July 16, 2025), https://www.federalregister.gov/d/2025-13342.

[143] State of Colo., Comment Letter, Att. 2: Letter from Colo. Springs. Utils., at 1, Docket No. EPA-R08-OAR-2024-0607-0059 (Sept. 15, 2025), https://www.regulations.gov/comment/EPA-R08-OAR-2024-0607-0059.

securing energy generation to replace the unit.[144] In January 2026, EPA rejected Colorado's SIP revision, concluding that the plan's (now unconsented) enforceable closure date might constitute a taking of property without required just compensation under the Fifth Amendment.[145] Beyond this legal argument, EPA also stated that Colorado's SIP raised "concerns regarding grid reliability" in the face of "surging demand."[146]

Commenters on EPA's proposed disapproval challenged both EPA's application of takings law and its asserted authority under the CAA to reject SIPs for raising legal risks.[147] In March 2026, Colorado and several conservation NGOs filed petitions for review of EPA's final disapproval in the Tenth Circuit.[148]

EPA also recently took a similar action to relieve a Wyoming plant of obligations under a regional haze plan. In 2014, EPA partially disapproved Wyoming's regional haze SIP and instead issued a federal implementation plan (FIP) — a step required if a state fails to submit or EPA disapproves a SIP[149] — that included a more stringent NOx emission limit for a coal-fired electric generating unit than the state had proposed.[150] At PacifiCorp's request, EPA allowed it to proceed under an alternative requirement because the owner agreed to permanently cease the unit's operations on or before December 31, 2027; the unit could have a more relaxed emission limit until then.[151] After PacifiCorp withdrew its consent to close the unit as required by the FIP in March 2026, citing concerns with securing replacement energy generation,[152] EPA proposed revising the FIP to remove

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[144] Colo. Springs Utils., Comment Letter on Air Plan Partial Approval and Partial Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, Docket No. EPA-R08-OAR-2024-0607-0026, (Mar. 11, 2025), https://www.regulations.gov/document/EPA-R08-OAR-2024-0607-0026.

[145] Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048 (Jan. 26, 2026), https://www.federalregister.gov/d/2026-01413. EPA took similar action regarding six oil-fired plants in Hawaii. *See* Partial Approval and Partial Disapproval of Air Quality Implementation Plans; Hawaii; Regional Haze State Implementation Plan for the Second Implementation Period, 91 Fed. Reg. 31,941 (May 29, 2026), https://www.federalregister.gov/d/2026-10754.

[146] Air Plan Disapproval; Colorado; Regional Haze Plan for the Second Implementation Period, 91 Fed. Reg. 3048, 3056 (Jan. 26, 2026), https://www.federalregister.gov/d/2026-01413.

[147] *See* Giancarlo Vargas, *EPA Disapproved Colorado's Regional Haze Plan Over a Single Contested Coal Unit Closure* 4–6, HARVARD ENV'T & ENERGY LAW PROGRAM (May 27, 2026), https://eelp.law.harvard.edu/epa-rejects-colorados-regional-haze-plan-over-disputed-coal-plant-closure/.

[148] Colorado v. EPA, No. 26-09515 (10th Cir. March 4, 2026); Nat'l Parks Conservation Ass'n v. EPA, No. 26-9516 (10th Cir. Mar. 4, 2026).

[149] *See* 42 U.S.C. § 7410(c)(1).

[150] Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Regional Haze Federal Implementation Plan, 91 Fed. Reg. 34,589, 34,592 (June 8, 2026), https://www.federalregister.gov/d/2026-11436https://www.federalregister.gov/documents/2026/06/08/2026-11436/approval-and-promulgation-of-air-quality-implementation-plans-wyoming-regional-haze-federal.

[151] *Id.*

[152] *Id.*

the unit closure requirement and to set a slightly lower emission limit that the unit could meet "without any upgrades or changes in operation."[153]

In each of these actions, EPA has allowed coal-fired plants to avoid the enforceable closure dates that operators originally accepted to avoid more stringent emissions limitations. The result runs against the conclusions of previous analyses that these closure dates (in lieu of more stringent emissions limits) were necessary to comply with CAA requirements.

E. Delayed, eased, or eliminated regulations for coal plant pollution

The administration has instituted several changes that relieve coal-fired power plants from complying with environmental rules about pollution, has extended deadlines for compliance, and has proposed or eliminated emission standards. Changes have included rules about air emissions from plants and about the byproducts of coal combustion that may be discharged into water. These loosened, eliminated, and delayed rules have reduced compliance costs for coal plant operators while allowing emissions and discharges that can cause serious health effects.

1. Exemptions for coal plants from the 2024 Mercury and Air Toxics Standards

In April 2025, President Trump invoked a never-before-used provision of the CAA to give coal-fired power plants an immediate two-year exemption from Biden-era standards for mercury and other hazardous air pollutants.

Section 112(i)(4) of the CAA provides the president authority to exempt power plants from regulations under that section for two years "if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so."[154] On April 8, 2025, President Trump exempted 68 coal-fired electric generating units[155] from the 2024 Mercury and Air Toxics Standards (MATS), which regulate emissions that have been shown to cause adverse health impacts, particularly to the brain and nervous system.[156] On July 17, 2025, he exempted 6 more coal-fired units.[157] This CAA authority had never been used

[153] *Id.* at 34,589, 34,595.

[154] 42 U.S.C. § 7412(i)(4).

[155] Presidential Proclamation, Regulatory Relief for Certain Stationary Sources to Promote American Energy (Apr. 21, 2025), https://www.federalregister.gov/d/2025-06936. EPA provided an accompanying page which included a fact sheet and the list of exempted sources. *Presidential Proclamation—Regulatory Relief for Certain Stationary Sources to Promote American Energy,* U.S. ENV'T PROT. AGENCY (Mar. 12, 2026), https://www.epa.gov/stationary-sources-air-pollution/presidential-proclamation-regulatory-relief-certain-stationary [https://perma.cc/VRK3-87KH].

[156] *Human Health & Environmental Impacts of the Electric Power Sector*, U.S. ENV'T PROT. AGENCY (Dec. 12, 2025), https://www.epa.gov/power-sector/human-health-environmental-impacts-electric-power-sector [https://perma.cc/C7V6-YRYK].

[157] Presidential Proclamation, Regulatory Relief for Certain Stationary Sources to Further Promote American Energy (July 23, 2025), https://www.federalregister.gov/d/2025-13883.

before, [158] and the exemptions were not accompanied by any findings of technological infeasibility or national security concerns.[159]

The administration released a fact sheet with the announced exemptions that explained the relaxed standards were (1) "supporting our nation's coal industry," (2) "addressing the threat to national security and energy stability," and (3) "balancing environmental standards with American prosperity."[160] The fact sheet explained these exemptions would prevent coal plants from being "prematurely forced offline" and highlighted the importance of coal in energy production, explaining that because 16 percent of U.S. electricity comes from coal, these regulations could lead to shutdowns, which then could lead to "electricity shortages."[161] Finally, the fact sheet stated that this action is in service of "balancing environmental standards with American prosperity," citing, among other things, that President Trump, "paused the expansion of windmills, recognizing their detrimental environmental impact, particularly on wildlife, often outweighs their benefits."[162]

The administration repealed the 2024 MATS in February 2026, so coal-fired power plants no longer require exemptions.[163] Litigants have challenged both the exemptions[164] and the final rule repealing

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[158] *See* Complaint at 1, Air Alliance Houston v. Trump, No. 1:25-cv-01852 (D.D.C. June 12, 2025) (referring to Section 7412(i)(4) as "a narrow and never-before-used provision").

[159] When EPA promulgated the 2024 MATS, however, the agency provided evidence that the 2024 regulations were technologically achievable. National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units Review of the Residual Risk and Technology Review, 89 Fed. Reg. 38,508 (May 7, 2024), https://www.federalregister.gov/d/2024-09148. *See also* Kendall McPhearson, *The Limits of Deference: Judicial Review of Pretextual National Security Rationales*, HARVARD ENV'T & ENERGY LAW PROGRAM (May 11, 2026), https://eelp.law.harvard.edu/the-limits-of-deference-judicial-review-of-pretextual-national-security-rationales/ (discussing this action in the context of broader use of national security rationales).

One organization that studied the feasibility of compliance concluded that even coal plants with the technology to comply with the 2024 standards were granted exemptions. *Trump Administration Handed Out Sweeping Free Passes to Pollute, More Extreme and Dangerous Than What Coal Plants Requested*, ENV'T DEFENSE FUND (Feb. 19, 2026), https://www.edf.org/media/trump-administration-handed-out-sweeping-free-passes-pollute-more-extreme-and-dangerous-what [https://perma.cc/7GG9-VY69]; *see also Trump Proclamation Exempts Nation's Dirtiest Coal Plants from Mercury & Air Toxics Standards*, NRDC (May 1, 2025), https://www.nrdc.org/media/trump-proclamation-exempts-nations-dirtiest-coal-plants-mercury-air-toxics-standards-mats [https://perma.cc/9YTJ-7VQ7] (discussing compliance feasibility and costs and pollution impacts).

[160] *Fact Sheet: President Donald J. Trump Lifts Burdensome EPA Restrictions on Coal Plants,* WHITE HOUSE (Apr. 8, 2025), https://www.whitehouse.gov/fact-sheets/2025/04/fact-sheet-president-donald-j-trump-lifts-burdensome-epa-restrictions-on-coal-plants/ [https://perma.cc/SJ9D-HQ8Q].

[161] *Id.*

[162] *Id.*

[163] National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units: Final Repeal, 91 Fed. Reg. 9088 (Feb. 24, 2026), https://www.federalregister.gov/d/2026-03638.

[164] Air Alliance Houston v. Trump, No. 1:25-cv-01852 (D.D.C. June 12, 2025); Air Alliance Houston v. EPA, No. 25-01143 (D.C. Cir. June 12, 2025).

the 2024 standards,[165] and the cases challenging the exemptions are currently held in abeyance pending resolution of the challenge to the repeal.

2. Extended compliance deadlines and proposed weaker rules for coal ash

In 2026, EPA relaxed requirements related to coal ash — an industrial waste created by coal combustion at coal-fired power plants and often stored nearby that contains contaminants like mercury and arsenic.[166] The Coal Ash Rule, first issued in 2015 under the Resource Conservation and Recovery Act, regulates facilities that hold this waste. In 2024, the Biden administration expanded the rule to cover hundreds of older "legacy" facilities, consistent with a 2018 D.C. Circuit decision directing the agency to cease exempting these inactive impoundments from regulation.[167]

In February 2026, EPA issued a final rule that delays deadlines set in the 2024 rule for coal ash sites to comply with a variety of requirements, including facility evaluation, groundwater monitoring, developing closure plans, and initiating closure, moving those deadlines back by one to three years.[168] In April 2026, the agency also issued a proposed rule that would weaken the 2024 standards for legacy coal ash surface impoundments and landfills, undoing many existing protections.[169] And in May 2026, the agency reopened a comment period on a 2020 proposal for EPA to issue lifetime federal permits for coal ash surface impoundments and landfills,[170] which raised concerns about the broad new availability of a "permit shield" that would immunize permitted facilities from liability.[171] Meanwhile, the agency has recently approved (or proposed to approve)

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[165] Air Alliance Houston v. EPA, No. 26-1070 (D.C. Cir. Mar. 30, 2026).

[166] *Regulatory Tracker: Coal Ash Rule*, HARVARD ENV'T & ENERGY LAW PROGRAM, https://eelp.law.harvard.edu/tracker/coal-ash-rule/.

[167] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments, 89 Fed. Reg. 38,950 (May 8, 2024), https://www.federalregister.gov/d/2024-09157.

[168] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; CCR Management Unit Deadline Extension Rule, 91 Fed. Reg. 5806 (Feb. 10, 2026), https://www.federalregister.gov/d/2026-02599.

[169] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy/CCRMU Amendments, 91 Fed. Reg. 18,968 (Apr. 13, 2026), https://www.federalregister.gov/documents/2026/04/13/2026-07061/hazardous-and-solid-waste-management-system-disposal-of-coal-combustion-residuals-from-electric.

[170] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program; Reopening of Comment Period, 91 Fed. Reg. 31,684 (May 28, 2026), https://www.federalregister.gov/d/2026-07061 (reopening comments on Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program, 85 Fed. Reg. 9940 (Feb. 20, 2020), https://www.federalregister.gov/d/2019-28440https://www.federalregister.gov/documents/2020/02/20/2019-28440/hazardous-and-solid-waste-management-system-disposal-of-coal-combustion-residuals-from-electric).

[171] *See* Miranda Willson, *EPA to Create Permitting System for Coal Ash Dumps*, E&E NEWS (May 27, 2026), https://www.eenews.net/articles/epa-to-create-permitting-system-for-coal-ash-dumps/ [https://perma.cc/V5LC-RL8S].

several states' plans to take over regulation of coal ash sites,[172] including plans EPA deemed insufficiently protective in the past,[173] a trend that has "picked up" under this administration.[174] In addition, EPA issued an Advance Notice of Proposed Rulemaking in July 2026 to gather input on general permits that would allow units to obtain permit coverage until states adopt the looser requirements proposed in April.[175]

Administrator Zeldin stated that the April 2026 proposed weakening of regulations reflects "EPA's commitment to restoring American energy dominance," while also citing, among other considerations, "rising energy costs for consumers."[176]

Groups have indicated that if EPA finalizes its April 2026 proposal to weaken federal coal ash rules, litigation is likely.[177]

3. *Extended compliance deadlines and proposed relaxed standards for effluent limits for coal plants*

EPA has also extended compliance deadlines under the Clean Water Act for a different type of waste from coal-fired power plants. On May 9, 2024, EPA published a Clean Water Act rule establishing zero-discharge limits for three types of wastewater generated at steam electric power plants, including combustion residual leachate (CRL) — a byproduct of coal combustion.[178] CRL can contain toxic heavy metals, including arsenic and mercury, and, if unmanaged, can contaminate groundwater or surface waters.[179]

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[172] *See Regulatory Tracker: Coal Ash Rule*, HARVARD ENV'T & ENERGY LAW PROGRAM, https://eelp.law.harvard.edu/tracker/coal-ash-rule/.

[173] *See, e.g.*, Approval of State Coal Combustion Residuals Permit Program, 91 Fed. Reg. 43,054 (July 14, 2026), https://www.federalregister.gov/d/2026-14118.

[174] Miranda Willson, *EPA Backs Louisiana Authority Over Coal Ash*, E&E NEWS (June 4, 2026), https://www.eenews.net/articles/epa-to-create-permitting-system-for-coal-ash-dumps/ [https://perma.cc/V5LC-RL8S].

[175] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Federal CCR Permit Program; General Permit Provisions, 91 Fed. Reg. 43,051 (July 14, 2026), https://www.federalregister.gov/d/2026-14115.

[176] Press Release, U.S. Env't Prot. Agency, *To Advance U.S. Energy Dominance, EPA Proposes Several Amendments to Coal Combustion Residuals (CCR) Requirements* (Apr. 9, 2026), https://www.epa.gov/newsreleases/advance-us-energy-dominance-epa-proposes-several-amendments-coal-combustion-residuals [https://perma.cc/D7WT-XHDY].

[177] Miranda Willson, *EPA to Loosen Coal Ash Requirements*, E&E NEWS (Apr. 9, 2026), https://www.eenews.net/articles/epa-to-loosen-coal-ash-requirements/ [https://perma.cc/97XT-MBQL].

[178] Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 89 Fed. Reg. 40,198 (May 9, 2024), https://www.federalregister.gov/d/2024-09185. CRL is "leachate from landfills or surface impoundments that contains combustion residuals." *Id.* at 40,292.

[179] *Id.* at 40,231.

On December 31, 2025, EPA extended the compliance deadlines for many of the 2024 rule's zero-discharge requirements by several years.[180] EPA justified the compliance extension, in part, by citing industry complaints that the 2024 rule could lead coal plants to retire prematurely at the same time the country was facing surging energy demand.[181] The agency said avoiding these premature closures was necessary to "mitigate an impending national energy emergency."[182] It also cited increased costs for energy consumers, saying that allowing more time for compliance would "help[] reduce short-term price pressures on American families."[183] And EPA linked demand, cost, and national security in its explanation for its rule: "Data centers use a large amount of electricity, making reliable and affordable power one of the most important factors to U.S. economic development and national security."[184] In January 2026, several environmental groups filed petitions for review of EPA's compliance extension in federal court.[185]

On May 18, 2026, EPA further proposed to revise the 2024 rule's effluent limitation guidelines for unmanaged CRL to provide greater flexibility to dischargers.[186] EPA's proposal asserted that the 2024 rule's limit for unmanaged CRL was "infeasible and impractical on a nationwide basis," particularly in the face of the purported energy crisis.[187]

4. *Repeal of greenhouse gas emission standards for coal- (and other fossil fuel-) fired power plants*

On September 17, 2026, EPA partially repealed its 2024 Carbon Pollution Standards that established greenhouse gas standards for power plants under section 111 of the CAA.[188]

In the 2024 rule, EPA determined that 90 percent carbon capture and storage was the best system of emissions reduction for existing long-term coal-fired electric generating units[189] and 40 percent

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[180] *See* Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Deadline Extensions, 90 Fed. Reg. 61,328, 61,329–30 (Dec. 31, 2025), https://www.federalregister.gov/d/2025-24102. The rule extended the compliance deadline for the 2024 rule's bottom ash transport water requirements from 2027 to 2029 and the deadlines for several wastewater and CRL requirements from 2029 to 2034. *Id.*

[181] *Id.* at 61,338–39.

[182] *Id.* at 61,329–30.

[183] *Id.* at 61,344.

[184] *Id.* at 61,337.

[185] *See Appalachian Voices v. EPA*, No. 26-01072 (4th Cir. Jan. 20, 2026); Center for Biological Diversity v. EPA, No. 26-416 (9th Cir. Jan. 21, 2026); *Waterkeeper Alliance, Inc. v. EPA*, No. 26-128 (2d Cir. Jan. 21, 2026). On February 11, 2026, these petitions were consolidated in the Second Circuit.

[186] Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category-Unmanaged Combustion Residual Leachate, 91 Fed. Reg. 28,487, 28,488 (May 18, 2026), https://www.federalregister.gov/d/2026-09895.

[187] *Id.* at 28,488.

[188] Partial Repeal of the Carbon Pollution Standards for Fossil Fuel-Fired Electric Generating Units, 91 Fed. Reg. 58,954 (Sept. 17, 2026), https://www.federalregister.gov/d/2026-19071.

[189] New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions

natural gas co-firing was the best system of emissions reduction for medium-term coal-fired units (those intended to close by 2039).[190] Coal-fired units that planned to close by 2032 were exempted from the 2024 rule. If implemented, EPA expected its 2024 rule to reduce coal production for power sector use by 84 percent by 2045.[191]

EPA's 2026 rule repealed its standards for existing coal-fired units, standards for existing gas-fired units and some standards for new units.[192] EPA determined that the 2024 standards and guidelines were not a "best system of emissions reduction" under Clean Air Act section 111 for a variety of reasons, including cost, effectiveness, and availability of emissions reduction technology. Some of these reasons rest on EPA's new expectation that coal plants will now continue operating longer — rather than retiring earlier — than it projected in 2024 because of increasing energy demands. EPA also asserted that the 2024 rules violated the Supreme Court's bar on "generation shifting," announced in *West Virginia v. EPA*.[193]

Also on September 17, 2026, EPA issued a supplemental proposal[194] "that CAA section 111 does not authorize the EPA to regulate emissions from power plants in response to global climate change concerns" and thus it must rescind its "contrary findings and determinations in 2015 and repeal[] all associated 2015 and 2024 GHG standards for the fossil fuel-fired EGU source category."[195] EPA asserted that "even the complete elimination of GHG emissions from the U.S. power sector. . .would have no more than *de minimis* impacts on the key indicators of adverse impacts attributed to global climate change."[196] Thus, EPA proposes that even though fossil fuel-fired power plants are the largest stationary source of greenhouse gas emissions in the U.S., it lacks authority to regulate them.[197] If EPA finalizes this supplemental proposal, it will repeal all greenhouse gas regulations for fossil fuel-fired electric generating units.[198]

From Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule, 89 Fed. Reg. 39798, 39,801 (May 9, 2024), https://www.federalregister.gov/d/2024-09233.

[190] *Id.*

[191] *Id.* at 40005–06.

[192] Partial Repeal of the Carbon Pollution, Standards for Fossil Fuel-Fired Electric, Generating Units, 91 Fed. Reg. 58,954 (Sept. 17, 2026), https://www.federalregister.gov/d/2026-19071.

[193] *Id. See* Carrie Jenks & Erika Kranz, *EPA Repeals Power Plant Carbon Standards*, HARVARD ENV'T & ENERGY LAW PROGRAM (Oct. 8, 2026), https://eelp.law.harvard.edu/epa-repeals-power-plant-carbon-standards/ (summarizing and analyzing EPA's partial final repeal of emissions standards).

[194] Rescission of the Greenhouse Gas Findings for Fossil Fuel-Fired Power Plants and Repeal of Regulations for Power Plant Greenhouse Gas Emissions Under Clean Air Act Section 111, 91 Fed. Reg. 59,002 (Sept. 17, 2026), https://www.federalregister.gov/d/2026-19072.

[195] *Id.* at 59,002.

[196] *Id.* at 59,006.

[197] *Sources of Greenhouse Gas Emissions*, U.S. ENV'T PROT. AGENCY (June 9, 2026), https://www.epa.gov/ghgemissions/sources-greenhouse-gas-Emissions [https://perma.cc/9TBH-T24C].

[198] *See* Carrie Jenks & Erika Kranz, *EPA Repeals Power Plant Carbon Standards*, HARVARD ENV'T & ENERGY LAW PROGRAM (Oct. 8, 2026), https://eelp.law.harvard.edu/epa-repeals-power-plant-carbon-standards/ (analyzing the proposed no-authority determination and implications).

States, environmental groups, and public health organizations have filed challenges to EPA's final partial repeal of the 2024 standards.[199]

F. Direct funding of coal-related projects through the Defense Production Act and other mechanisms

On April 20, 2026, President Trump issued a Presidential Determination to the Secretary of Energy under Section 303 of the Defense Production Act (DPA), a Cold War era statute which grants the President broad powers to ensure the provision of materials necessary to support national defense. The Presidential Determination declared "reliable coal supply chains and baseload power generation capacity are essential to the United States' national defense."[200] The Determination stated presidential action under the DPA was necessary due to "financing constraints, regulatory delays, long-lead maintenance, expensive and bespoke repair cycles, and market barriers."[201] This determination granted the Secretary of Energy the authority to implement its findings, "including making necessary purchases, commitments, and financial instruments to enable these projects."[202]

Shortly thereafter, on June 4, 2026, DOE announced it would be providing up to $475 million to support 12 coal fleet projects and $75 million for "the West Gateway Terminal Project, a rail-served marine export terminal in Oakland, California, capable of handling more than 10 million tons of bulk commodities annually."[203] The funding will draw from the Defense Production Act Fund (50 U.S.C. § 4534), a U.S. Treasury account held to carry out the purposes of Title III of the DPA, which focuses on the expansion of productive capacity and supply.[204] DOE stated of the export facility: "Investment in this critical infrastructure for [the] bulk commodities export terminal is paramount to national security. It directly bolsters robust domestic coal production, diversifying energy supply chains and fostering economies of scale. By facilitating access to international markets for U.S. coal, the project helps prevent the closure of domestic coal mines by growing demand."[205]

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[199] *American Lung Ass'n v. EPA*, No. 26-1238 (D.C. Cir. Sept. 17, 2026); *New York v. EPA*, No. 26-1259 (D.C. Cir. Oct. 1, 2026).

[200] Presidential Determination Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Coal Supply Chains and Baseload Power Generation Capacity, 91 Fed. Reg. 21,927 (April 23, 2026), https://www.federalregister.gov/d/2026-08010.

[201] *Id.*

[202] *Id.*

[203] Press Release, *Energy Department to Use Defense Production Act Funding to Expand Coal Capacity at 13 Plants and Build Export Infrastructure* (June 4, 2026), https://www.energy.gov/articles/energy-department-use-defense-production-act-funding-expand-coal-capacity-13-plants-and [https://perma.cc/8EGK-AQLH]; *Defense Production Act Title III Project Selections: Coal Fleet Projects and West Gateway Terminal*, U.S. DEP'T OF ENERGY, https://www.energy.gov/hgeo/defense-production-act-title-iii-project-selections-coal-fleet-projects-and-west-gateway [https://perma.cc/Y7P2-6FFB] (last accessed Oct. 22, 2026).

[204] *See* Kendall McPherson, *The Defense Production Act and Energy Policy: Legal Implications of Expansive Executive Power*, HARVARD ENV'T & ENERGY LAW PROGRAM (forthcoming Oct. 2026) (explaining the mechanics of DPA funding and putting use of DPA funding for energy-related projects in historical context).

[205] *Defense Production Act Title III Project Selections: Coal Fleet Projects and West Gateway Terminal*, U.S. DEP'T OF ENERGY, https://www.energy.gov/hgeo/defense-production-act-title-iii-project-selections-coal-fleet-projects-and-west-gateway [https://perma.cc/Y7P2-6FFB] (last accessed Oct. 22, 2026).

In September 2025, DOE announced an additional $525 million "to expand and reinvigorate America's coal industry."[206] The agency sought applications for $350 million in funding for "recommissioning, retrofitting, and strategically repurposing" coal-fired generators.[207] $175 million in funding was available for projects to "modernize, retrofit, and extend the useful life of coal-fired power plants that serve rural and remote communities."[208] Of the 10 projects selected, seven will upgrade and extend the useful life of existing coal plants.[209] One project in Cumberland, Maryland, plans to recommission a coal facility that closed in 2024.[210] DOE has also awarded funding to support planned new coal-fired power plants in Alaska and West Virginia.[211]

As explanation for its funding, DOE cited two pro-coal executive orders[212] and stated that these facilities "offer[] the fastest and most cost-effective path to restoring stability while supporting the nation's industrial and security priorities" and that the award program "will secure the grid, power the nation's industrial resurgence, and protect communities from reliability shortfalls."[213]

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[206] Department of Energy Funding Notice: Restoring Reliability: Coal Recommissioning and Modernization, https://www.energy.gov/hgeo/funding-notice-restoring-reliability-coal-recommissioning-and-modernization [https://perma.cc/Y7P2-6FFB] (last accessed Oct. 22, 2026).

[207] *Funding Notice: Restoring Reliability: Coal Recommissioning and Modernization: DE-FOA-0003605*, U.S. DEP'T OF ENERGY (last updated June 9, 2026), https://www.energy.gov/hgeo/funding-notice-restoring-reliability-coal-recommissioning-and-modernization [https://perma.cc/Y7P2-6FFB].

[208] *Id.*

[209] *Project Selections for Broad Agency Announcement DE-FOA-0003605, Restoring Reliability: Coal Recommissioning and Modernization (Topic 2)*, U.S. DEP'T OF ENERGY (Feb. 11, 2026), https://www.energy.gov/hgeo/project-selections-broad-agency-announcement-de-foa-0003605-restoring-reliability-coal [https://perma.cc/F9W2-VSN5]; *Project Selections for Broad Agency Announcement DE-FOA-0003605, Restoring Reliability: Coal Recommissioning and Modernization (Topic 1)*, U.S. DEP'T OF ENERGY (June 4, 2026), https://www.energy.gov/hgeo/project-selections-broad-agency-announcement-de-foa-0003605-restoring-reliability-coal-0 [https://perma.cc/S289-FWGT].

[210] *Project Selections for Broad Agency Announcement DE-FOA-0003605, Restoring Reliability: Coal Recommissioning and Modernization (Topic 1)*, U.S. DEP'T OF ENERGY (June 4, 2026), https://www.energy.gov/hgeo/project-selections-broad-agency-announcement-de-foa-0003605-restoring-reliability-coal-0 [https://perma.cc/S289-FWGT].

[211] *Id.*

[212] *Project Selections for Broad Agency Announcement DE-FOA-0003605, Restoring Reliability: Coal Recommissioning and Modernization (Topic 1)*, U.S. DEP'T OF ENERGY (June 4, 2026), https://www.energy.gov/hgeo/project-selections-broad-agency-announcement-de-foa-0003605-restoring-reliability-coal-0 [https://perma.cc/S289-FWGT] (citing Executive Order 14262 and Executive Order 14261).

[213] *DE-FOA-0003605: Restoring Reliability: Coal Recommissioning and Modernization*, U.S. DEP'T OF ENERGY, https://exchange.energy.gov/FoaDetails.aspx?FoaId=f868e23e-e2f0-43c9-8eaa-75b614d851f3 (last accessed Oct. 16, 2026) [https://perma.cc/38KP-CW2E].

II. Anti-Wind Actions

A. Withdrawal of public lands from availability for new offshore wind leasing

On his first day in office, the same day President Trump declared an energy emergency that emphasized increasing energy demands, President Trump ordered a temporary withdrawal of all outer continental shelf lands that had been available for wind energy leasing, citing presidential authority under the Outer Continental Shelf Lands Act.[214] In July and August 2025, the Bureau of Ocean Energy Management (BOEM) formally implemented this withdrawal by rescinding all designated outer continental shelf Wind Energy Areas (totaling 3.5 million acres) and by rescinding the wind leasing schedule required under a 2024 regulation.[215] As a result, no new federal offshore wind leases will be offered until the withdrawal is reversed, although the withdrawal states that it does not affect rights under existing leases.

President Trump stated that the end of leasing was "consistent with the principles of responsible public stewardship," and with "the need to foster an energy economy capable of meeting the country's growing demand for reliable energy, the importance of marine life, impacts on ocean currents and wind patterns, effects on energy costs for Americans," and the need to "ensure that the United States is able to maintain a robust fishing industry."[216] BOEM did not explain its rescission of designated Wind Energy Areas beyond citing the president's temporary withdrawal memorandum and the Secretary of the Interior's order "Ending Preferential Treatment for Unreliable, Foreign Controlled Energy Sources in Department Decision-making," as support for no longer "designating large areas . . . for speculative wind development."[217]

B. Pause on authorizing wind energy projects

Also on his first day in office, President Trump issued a memorandum directing several federal agencies to suspend issuing all "new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects pending the completion of a comprehensive assessment and review of Federal wind leasing and permitting practices."[218] In response, several agencies ordered an immediate pause on issuing authorizations that facilitate the development of wind energy projects. Most centrally, DOI, which includes BOEM (which approves offshore wind projects) and BLM

[214] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01966 (citing 43 U.S.C. §1341(a)).

[215] Rescission of Renewable Energy Leasing Schedule, 90 Fed. Reg. 37,386 (Aug. 5, 2025), https://www.federalregister.gov/d/2025-14805.

[216] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01966.

[217] Press Release, Bureau of Ocean Energy Mgmt., *BOEM Rescinds Designated Wind Energy Areas on the Outer Continental Shelf* (July 30, 2025), https://www.boem.gov/newsroom/notes-stakeholders/boem-rescinds-designated-wind-energy-areas-outer-continental-shelf [https://perma.cc/JYP3-S862].

[218] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01966.

(which approves onshore wind projects on most federal lands), issued an order on January 20, 2025, suspending all authorizations of leases, rights-of-way, contracts, or other agreements required to facilitate wind energy development.[219] Other agencies announced they too would stop working on wind energy authorizations through notices on their websites or otherwise.[220] Although DOI's order was on its face effective for 60 days, the pause on all wind energy authorizations continued well beyond that time.[221]

The agencies provided no explanation of their own for implementing the pause beyond citing the president's wind memorandum. That memorandum cited as justification "growing demand for reliable energy"; "the importance of marine life" and "birds"; "impacts on ocean currents and wind patterns"; "effects on energy costs," concerns about "transportation," "navigational safety," and "national security"; and concerns about a continued "robust fishing industry." It also raised questions about "the economic costs associated with the intermittent generation of electricity and the effect of subsidies on the viability of the wind industry."[222]

Seventeen states (joined by a wind energy group) sued, claiming that the agencies' decisions violated the Administrative Procedure Act (APA) because they were arbitrary and capricious and contrary to law. In December 2025, a federal district court agreed, holding that the agencies had failed to provide a reasonable explanation for their decision to cease wind-related authorizations (and, centrally, that citing the president's memorandum was insufficient) and that the agencies' delay in responding to requests for authorizations was unlawful. The court vacated the agencies' wind pause orders, rendering them a nullity.[223] In June 2026, the federal government withdrew its appeal of that decision.

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[219] U.S. Department of Interior, Temporary Suspension of Delegated Authority, Order No. 3415 (Jan. 20, 2025), https://www.doi.gov/document-library/secretary-order/3415-temporary-suspension-delegated-authority [https://perma.cc/QNQ7-6QQQ]. Although the order applies more generally, the effect was cessation of wind-related authorization even when other energy-related authorizations continued.

[220] *See, e.g.*, *3-200-71: Eagle Incidental Take*, U.S. FISH & WILDLIFE SERV. https://perma.cc/HC9J-UMND (The U.S. Fish and Wildlife Service . . . is temporarily ceasing issuance of permits to wind facilities until further notice); Press Release, Bureau of Ocean Energy Mgmt., *Postponed: Public Meetings on Draft Environmental Review of Potential Mitigation of Future Development of Wind Lease Areas Offshore California* (Jan. 28, 2025), https://perma.cc/AN9R-5FBQ ("The Department of the Interior and the Bureau of Ocean Energy Management are implementing the Administration's Presidential Memorandum (PM) temporarily halting offshore wind leasing on the Outer Continental Shelf. The PM also pauses new or renewed approvals, rights-of-way, permits, leases, or loans for offshore wind projects pending a review of federal wind leasing and permitting practices.").

[221] As of a reviewing court's decision in December 2025, the authorization moratorium remained in place.

[222] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363, 8363–64 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01966.

[223] Memorandum and Order, New York v. Trump, No. 1:25-cv-11221, slip op. at 8–9 (D. Mass. Dec. 8, 2025), https://www.climatecasechart.com/documents/massachusetts-federal-court-ruled-that-federal-pause-on-wind-energy-authorizations-was-unlawful_a00b. For a fuller analysis of this decision, *see* Erika Kranz, *Federal Court Vacates Wind Energy Authorization* Pause, HARVARD ENV'T & ENERGY LAW PROGRAM (Dec. 16, 2025), https://eelp.law.harvard.edu/federal-court-vacates-wind-energy-authorization-pause/.

C. Other policies slowing wind permitting or increasing burdens on wind development

Beyond the blanket pause on wind-related authorizations, agencies have also instituted policies that make approvals related to wind (both onshore and offshore) more onerous or that prioritize other non-renewable approvals. On July 7, 2025, President Trump directed the DOI Secretary to "review [] regulations, guidance, policies, and practices under the [DOI]'s jurisdiction to determine whether any provide preferential treatment to wind and solar facilities in comparison to dispatchable energy sources" and "revise any identified regulations, guidance, policies, and practices as appropriate and consistent with applicable law to eliminate any such preferences for wind and solar facilities."[224] Actions consistent with this direction (both by DOI and other agencies) include (1) requiring high-level DOI review of decisions or actions related to wind (or solar) facilities within DOI's jurisdiction;[225] (2) a DOI order requiring it to permit only energy projects with the highest "capacity density," which tends to disfavor wind (and solar) compared to non-renewable sources;[226] (3) a similar U.S. Army Corps of Engineers "capacity density" requirement; (4) prohibiting the U.S. Fish and Wildlife Service from authorizing incidental take permits to wind facilities under the Bald and Golden Eagle Protection Act;[227] (5) preventing wind and solar developers from using the Information for Planning and Consultation database, which developers use to determine whether their projects will affect federally protected species;[228] (6) adopting a new interpretation of the Outer Continental Shelf Lands Act that prevents wind development that may cause any interference with other activities on the outer continental shelf;[229] and (7) a de facto halt of Department of Defense (DOD) review of onshore wind projects that impact military operations.[230]

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[224] Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, Exec. Order 14315, 90 Fed. Reg. 30,821 (July 7, 2025), https://www.federalregister.gov/d/2025-12961.

[225] U.S. Dep't of Interior, Departmental Review Procedures for Decisions, Actions, Consultations, and Other Undertakings Related to Wind and Solar Energy Facilities (July 15, 2025), https://www.doi.gov/media/document/departmental-review-procedures-decisions-actions-consultations-and-other [https://perma.cc/PZ5F-98ZS].

[226] U.S. Dep't of Interior, SO 3438 - Managing Federal Energy Resources and Protecting the Environment (Aug. 1, 2025), https://www.doi.gov/document-library/secretary-order/so-3438-managing-federal-energy-resources-and-protecting [https://perma.cc/B65G-6UJZ].

[227] Press Release, *Army Corps of Engineers Begins Implementing Policy to Increase America's Energy Generation Efficiency* (Sept. 22, 2025), https://www.usace.army.mil/Media/News/NewsSearch/Article/4311128/army-corps-of-engineers-begins-implementing-policy-to-increase-americas-energy/ [https://perma.cc/6ERD-Z9GA].

[228] Ian M. Stevenson, *Renewable Developers Locked Out of FWS Online*, E&E NEWS (Apr. 7, 2026), https://www.eenews.net/articles/renewable-developers-locked-out-of-fws-online-tool/ [https://perma.cc/PD3A-PWFH].

[229] U.S. Dep't of Interior, M-37086 - Withdrawal of Solicitor's Opinion M-37067 and Reinstatement of M-Opinion 37059, Secretary's Duty to Prevent Interference with Reasonable Uses of Exclusive Economic Zone, the High Seas, and the Territorial Seas in Accordance with Outer Continental Shelf Lands Act Subsection 8(p), Alternate Energy-related Uses on the Outer Continental Shelf (May 1, 2025), https://www.doi.gov/sites/default/files/documents/2025-05/m-37086.pdf [https://perma.cc/6ZPF-ABPR].

[230] Brad Plumer, *More Than 150 Wind Projects Stall as Pentagon Delays Reviews*, NEW YORK TIMES (May 4, 2026), https://www.nytimes.com/2026/05/04/climate/wind-power-delays-trump-pentagon.html.

As justification for this collection of measures, in several instances the agencies cite the president's energy emergency declaration and directive that agencies should "review" policies for "preferential treatment" of wind.[231] Agencies have not identified instances of preferential treatment that their actions were intended to address. DOI stated that its capacity density order was "[b]ased on common sense, arithmetic, and physics," that "wind and solar projects are highly inefficient uses of Federal lands" because they "use disproportionate Federal lands relative to their energy generation when compared to other energy sources, like nuclear, gas, and coal."[232] In the case of DOI's new policy regarding interference with other offshore activities, the agency asserted that its change was required because its former position rested on an incorrect statutory interpretation.[233] DOD stated that it required more time to analyze "the evolving global threat-picture" presented by wind projects, such as radar interference,[234] though opponents argue that DOD has not explained how these risks are new nor why it has departed from previous conclusions that wind energy development did not cause significant impacts on military activities.[235]

These actions have been subject to challenges. A coalition of wind industry and advocacy organizations sued several agencies and officials over the first six of the actions listed above. In April 2026 a federal district court entered a preliminary injunction, having concluded that the groups had shown standing, that the actions were challengeable, and that the actions were either arbitrary and capricious in violation of the APA or a violation of substantive statutes.[236] The federal defendants

[231] *See, e.g.*, U.S. Dep't of Interior, Departmental Review Procedures for Decisions, Actions, Consultations, and Other Undertakings Related to Wind and Solar Energy Facilities (July 15, 2025), https://www.doi.gov/media/document/departmental-review-procedures-decisions-actions-consultations-and-other [https://perma.cc/PZ5F-98ZS].

[232] U.S. Dep't of Interior, SO 3438 - Managing Federal Energy Resources and Protecting the Environment (Aug. 1, 2025), https://www.doi.gov/document-library/secretary-order/so-3438-managing-federal-energy-resources-and-protecting [https://perma.cc/B65G-6UJZ].

[233] U.S. Dep't of Interior, M-37086 - Withdrawal of Solicitor's Opinion M-37067 and Reinstatement of M-Opinion 37059, Secretary's Duty to Prevent Interference with Reasonable Uses of Exclusive Economic Zone, the High Seas, and the Territorial Seas in Accordance with Outer Continental Shelf Lands Act Subsection 8(p), Alternate Energy-related Uses on the Outer Continental Shelf (May 1, 2025), https://www.doi.gov/sites/default/files/documents/2025-05/m-37086.pdf [https://perma.cc/6ZPF-ABPR].

[234] Opinion and Order Denying Motion to Dismiss and Granting Motion for Preliminary Injunction at 9, Renewable Northwest v. Hegseth, No. 3:26-cv-01092 (D. Or. Aug. 6, 2026), https://static.notus.org/5f/da/c21deea64225affc9576347f0a70/gov-uscourts-ord-194424-125-0-1.pdf.

[235] Plaintiffs' Motion for Stay or Preliminary Injunction, Renewable Northwest v. Hegseth, No. 3:26-cv-01092 (D. Or. June 11, 2026), https://cdn.climatepolicyradar.org/navigator/USA/2026/renewable-northwest-v-hegseth_c75d05882fb85639b2b5924ecdd00f8f.pdf.

[236] Memorandum and Order, Renew Northeast v. U.S. Dep't of Interior, No. 25-cv-13961 (D. Mass Apr. 21, 2026), https://www.govinfo.gov/content/pkg/USCOURTS-mad-1_25-cv-13961/pdf/USCOURTS-mad-1_25-cv-13961-0.pdf. The court did not enjoin the challenged action regarding incidental take permits under the Bald and Golden Eagle Protection Act because the agency had already withdrawn the policy, later dismissing the parties' challenge as to that action as moot. Memorandum and Order, Renew Northeast v. U.S. Dep't of Interior, No. 25-cv-13961 (D. Mass June 16, 2026) (also denying motion to dismiss challenges to other actions).

have filed a notice of appeal, although as of this writing it is not yet clear whether they intend to pursue that appeal or are simply still deciding whether to do so.

A separate group of wind industry and advocacy groups has challenged DOD's de facto pause. In July 2026, a district court granted a preliminary injunction ordering DOD to resume its review of projects, concluding that the pause likely violated statutory and regulatory deadlines that govern the review process and that the equities favored an injunction.[237] On October 20, 2026, the challengers filed a motion to enforce the court's preliminary injunction, arguing that although DOD has identified new ways it will review projects, in effect DOD is "maintaining its review freeze through new mechanisms," and thus not complying with the court's order or with statutory and regulatory deadlines.[238]

D. Stop-work orders for individual projects

The government has also targeted individual utility-scale offshore wind projects that were already permitted through stop-work orders that required developers to cease construction. BOEM issued a first set of stop-work orders to Empire Wind[239] and Revolution Wind[240] in April and August 2025, respectively. In December 2025, BOEM then issued another set of orders for five offshore wind projects off the East Coast: Vineyard Wind, Revolution Wind, Sunrise Wind, Coastal Virginia Offshore Wind, and Empire Wind.[241] These projects are the largest in the construction pipeline. For example, the Coastal Virginia project, owned by Dominion Energy, is the largest offshore wind project in the United States;[242] Vineyard Wind is the nation's first utility-scale offshore wind energy project, projected to provide clean energy to over 400,000 homes and businesses and was 95 percent complete at the time of the order and already partially operational.[243]

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[237] Opinion and Order Denying Motion to Dismiss and Granting Motion for Preliminary Injunction, Renewable Northwest v. Hegseth, No. 3:26-cv-01092 (D. Or. Aug. 6, 2026), https://static.notus.org/5f/da/c21deea64225affc9576347f0a70/gov-uscourts-ord-194424-125-0-1.pdf (also holding that the plaintiffs had standing).

[238] Plaintiffs' Motion to Enforce Stay at 2, 3, Renewable Northwest v. Hegseth, No. 3:26-cv-01092 (D. Or. Oct. 20, 2026).

[239] U.S. Dep't of Interior, Director's Order to Empire Offshore Wind, LLC (Apr. 16, 2025), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/BOEM%20Director%26%23039%3Bs%20Order%20Empire%20Wind.pdf [https://perma.cc/XEV9-65W9].

[240] U.S. Dep't of Interior, Director's Order to Orsted North America Inc. (Aug. 22, 2025), https://www.boem.gov/sites/default/files/documents/renewable-energy/Director%26%23039%3BsOrder-20250822.pdf?VersionId=V03AWAHsV_kDvT048xf8dG7A.Rsj6HZJ [https://perma.cc/6QEE-MCBE].

[241] Press Release, U.S. Dep't of Interior, *The Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases* (Dec. 22, 2025), https://www.doi.gov/pressreleases/trump-administration-protects-us-national-security-pausing-offshore-wind-leases [https://perma.cc/4KGX-ZW5E].

[242] *Coastal Virginia Offshore Wind*, DOMINION ENERGY, https://coastalvawind.com/ (last accessed Oct. 16, 2026) [https://perma.cc/LTD3-XH3S].

[243] *Nation's first commercial-scale offshore wind project*, Vineyard Wind, https://www.vineyardwind.com/vw1-1 [https://perma.cc/4SKG-BHV2] (last accessed Oct. 16, 2026); *see* Complaint for Declaratory and Injunctive Relief at ¶1, Vineyard Wind 1 LLC v. U.S. Dep't of Interior, No. 1:26-cv-10156 (D. Mass. Jan 15, 2026).

The initial set of stop-work orders for Empire Wind and Revolution Wind cited the need to address concerns and feedback received after a review conducted pursuant to President Trump's day one memorandum ordering the withdrawal of all areas of the outer continental shelf from new wind energy leasing[244] and a pause in "new or renewed approvals, rights of way, permits, leases, or loans for onshore or offshore wind projects" pending a "comprehensive assessment of Federal wind leasing and permitting practices."[245] The December stop-work orders provided a different rationale: "national security risks."[246]

Developers and states quickly sued about all of the orders, arguing, for example, that they are supported by no reasonable basis, violate laws governing their leases, and constitute a due process violation; several challengers have also asserted that the cited national security basis for the December stop-work orders was pretextual — that this was never about genuine national security concerns, but instead about an administration following a president's direction to stop wind development.[247] Courts have shown skepticism towards the government's provided rationale.[248] Judges have preliminarily enjoined each order, determining that the offshore wind challengers had shown a likelihood of success on their claims that BOEM's orders violated the APA's procedural requirements or substantive law. A judge in the District Court for the District of Columbia granted two preliminary injunctions to Revolution Wind in its challenges to the August and December stop-work orders, calling "the Bureau's failure to provide any reasoning for its [August order] . . . the height of arbitrary and capricious action."[249] Regarding the December stop-work order, the judge noted: "this time the government did provide a reason for its decision, but its failure to explain or apply that reasoning suggests that the stated national security reason may have been pretextual."[250] He further noted that concern was "heightened by Interior Secretary Burgum's press appearances on December 22nd and 23rd in which he criticized offshore wind projects for a variety of reasons unrelated to national security."[251]

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[244] Temporary Withdrawal of All Areas on the Outer Continental Shelf from Offshore Wind Leasing and Review of the Federal Government's Leasing and Permitting Practices for Wind Projects, 90 Fed. Reg. 8363 (signed Jan. 20, 2025), https://www.federalregister.gov/d/2025-01966.

[245] *Id.*

[246] Press Release, U.S. Dep't of Interior, *The Trump Administration Protects U.S. National Security by Pausing Offshore Wind Leases* (Dec. 22, 2025), https://www.doi.gov/pressreleases/trump-administration-protects-us-national-security-pausing-offshore-wind-leases [https://perma.cc/4KGX-ZW5E].

[247] *See, e.g.,* Complaint, Va. Elec. & Power Co. v. U.S. Dep't of Interior, No. 2:25-cv-00830 (E.D. Va. Dec. 23, 2026).

[248] Kendall McPhearson, *The Limits of Deference: Judicial Review of Pretextual National Security Rationales*, HARVARD ENV'T & ENERGY LAW PROGRAM (May 11, 2026), https://eelp.law.harvard.edu/the-limits-of-deference-judicial-review-of-pretextual-national-security-rationales/.

[249] Revolution Wind, LLC v. Burgum, No. 1:25-cv-02999, Transcript of Preliminary Injunction Hearing at 44:5–7 (D.D.C. Jan. 12, 2026).

[250] *Id.* at 44:7–10.

[251] *Id.* at 44:11–14.

Though the December stop-work orders were enjoined and have now expired by their terms, litigants have expressed concern that BOEM could renew them indefinitely.[252] These project delays accrued major costs to companies, with Revolution Wind estimating costs of $1.44 million per day that construction was halted.[253] Beyond delay costs, the companies also faced significant financial risk from potential project cancellations. Revolution Wind, for example, anticipated losses of more than $6 billion if their offshore development was canceled.[254] At the time of the administration's December order, "in reliance on the federal approvals and oversight process," Vineyard Wind had spent more than $4.5 billion "in engineering, planning, permitting, and construction costs to ensure the Project's viability and success."[255]

Despite these hurdles, the projects are now moving forward. Coastal Virginia Offshore Wind[256] and Revolution Wind[257] have started sending power to the grid. Decisions on most challengers' requests for vacatur and declaratory relief from the December stop-work order are still pending as of the publication of this paper. However, on September 30, 2026, the court reviewing Empire Wind's stop-work order granted the government's motion for summary judgment, holding that because the 90-day suspension order has now expired, Empire Wind's claims were moot and the court therefore lacked jurisdiction.[258]

E. Permit reconsideration for individual projects

In at least five recent instances, the government has indicated that it is reconsidering permits issued by BOEM for offshore wind facilities.

In July 2025, a group of opponents to the Atlantic Shores wind project offshore of New Jersey filed a challenge to BOEM's and the National Marine Fisheries Service's consideration and approval of that project. Rather than defend its decision approving the project, in September 2025, BOEM indicated it intended to "reconsider, re-review, or modify" the construction and operations plan for the project,[259] and on August 10, 2026, a federal district court granted BOEM's motion to voluntarily

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[252] *See, e.g.*, Opposition to Motion for Extension of Time to Lodge the Administrative Record at 2, Revolution Wind, LLC v. Burgum, No. 1:25-cv-02999 (D.D.C. Mar. 20, 2026).

[253] Revolution Wind, LLC v. Burgum, No. 1:25-cv-02999, Transcript of Preliminary Injunction Hearing at 45:9–10 (D.D.C. Jan. 12, 2026).

[254] *Id.* at 45:13–14.

[255] Complaint at ¶ 2, Vineyard Wind 1 LLC v. U.S. Dep't of Interior, No. 1:26-cv-10156 (D. Mass. Jan 15, 2026).

[256] Shannon Heckt, *Dominion Produces First Power from Coastal Virginia Offshore Wind Project*, VIRGINIA MERCURY (Mar. 24, 2026), https://virginiamercury.com/2026/03/24/dominion-produces-first-power-from-coastal-virginia-offshore-wind-project/ [https://perma.cc/ZL7U-DST5].

[257] *Construction Updates: Revolution Wind*, ORSTED ("As of March 2026, Revolution wind is delivering power to the grid. The project is more than 90% complete, with several key construction scopes already finished."), https://revolution-wind.com/construction-updates [https://perma.cc/5Y3P-5FAT] (last accessed Oct. 22, 2026).

[258] Memorandum Opinion, Empire Leaseholder LLC et al. v. Burgum, Case 1:26-cv-00004 (D.D.C. Sept. 30, 2026).

[259] Motion and Memorandum in Support of Voluntary Remand and Stay, Save Long Beach Island, Inc. v. Dep't of Com., No. 1:25-cv-02211 (D.D.C. Sept. 26, 2025).

remand its decision.[260] On October 9, 2026, BOEM confirmed that it "is reviewing its prior . . . approval" for the project.[261]

Similarly, after opponents of the SouthCoast Wind project south of Martha's Vineyard and Nantucket filed a March 2025 challenge to BOEM's NEPA and National Historic Preservation Act analyses of the project, BOEM moved for remand so it could reconsider its authorization of the construction and operations plan for project. The court granted that motion for voluntary remand in November over the objection of the intervenor wind developer.[262]

The Maryland Offshore Wind Project has faced similar challenges. Ocean City, Maryland, and other opponents filed a challenge to BOEM's approval of the construction and operations plan for that project in 2024. In December 2025, the court denied BOEM's motion for voluntary remand of the approval, which BOEM had said was warranted because it had "identified an error" in its process.[263] On October 13, 2026, BOEM again urged the court to remand the permit to the agency for further consideration under the Outer Continental Shelf Lands Act, stating that it had previously failed to explain the project's adverse impacts to other activities on the outer continental shelf.[264] Meanwhile, EPA in July 2025 sent a letter to the Maryland Department of the Environment, stating that it had "identified an error" in that agency's "final permit decision" for the project and that the agency must reissue the permit.[265]

On October 20, 2026, in a challenge to approval of the New England Wind project off the coast of Massachusetts, BOEM said in a response to challengers' motion for summary judgment that it now "agrees with Plaintiffs that BOEM's prior approach" to assessing the project's "potential moderate to major adverse impacts to other uses" of the outer continental shelf did not comply with the Outer Continental Shelf Lands Act.[266] It asked the court to remand without vacatur its construction and operations plan approval.[267]

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[260] Memorandum Opinion and Order, Save Long Beach Island, Inc. v. U.S. Dep't of Com., No. 1:25-cv-02211 (D.D.C. Aug. 10, 2026).

[261] Joint Status Report, Save Long Beach Island, Inc. v. U.S. Dep't of Com., No. 1:25-cv-02211 (D.D.C. Oct. 9, 2026).

[262] Opinion and Order, Town & County of Nantucket v. Burgum, No. 1:25-cv-00906 (D.D.C. Nov. 4, 2025).

[263] Order, Mayor and City Council of Ocean City, Md. v. U.S. Dep't of Interior, No. 1:24-cv-03111 (D. Md. Dec. 4, 2025).

[264] Federal Defendants' Combined Memorandum in Response to Plaintiff's Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment, Save Long Beach Island, Inc. v. Dep't of Com., No. 1:25-cv-02211 (D.D.C. Oct. 13, 2026).

[265] Letter from U.S. Env't Prot. Agency Region 3 Administrator to Secretary, Maryland Dep't of the Env't (July 7, 2025), https://www.epa.gov/system/files/documents/2025-07/mde-final-permit-appeal-letter-7-7-2025.pdf [https://perma.cc/ZG5U-NHGP].

[266] Memorandum in Support of Federal Defendants' Cross-Motion for Summary Judgment and in Response to Plaintiffs' Motion for Summary Judgment at 14, 15, ACK for Whales et al. v. U.S. Dep't of Commerce, No. 1:25-cv-01678 (D.D.C. Oct. 20, 2026).

[267] *Id.* at 17.

And on October 9, 2026, BOEM made a similar move in a suit involving challenges to its approval of the Revolution Wind project off the coast of Rhode Island. In that case, pending since 2024, BOEM stated that the court should "remand [its] approval of the Construction and Operations Plan" for the project so the agency "can re-evaluate its compliance with the Outer Continental Shelf Lands Act."[268] Unlike the Atlantic Shores, SouthCoast, and Maryland projects, none of which are yet under construction, the Revolution Wind Project is nearly fully constructed and is expected to be fully operational later this year.[269]

F. Agreements requiring wind lease cancellation and investment in non-wind energy in exchange for public funds

In addition to removing the availability of offshore lands for future leasing, the administration has also taken a targeted approach to encourage the holders of offshore wind leases to abandon those leases and end the possibility that they would be developed. It has done so through reaching a series of "settlement" agreements with wind developers, under which the developers abandon their leases, the developers commit to investing large sums of money into non-wind energy projects, and the government commits to paying the developers equivalent sums.

The first of these agreements involved TotalEnergies, a French company, that in 2022 purchased two leases for offshore wind development off the coasts of North and South Carolina and New York and New Jersey. In March 2026, DOI announced that it and TotalEnergies had reached "innovative agreement[s]" under which the United States will pay the company $928 million, and the company will both relinquish its offshore wind leases and invest the same sum into oil and gas projects in Texas and the Gulf of Mexico.[270] In the months since, the administration has reached similar agreements with other companies, which have agreed to relinquish leases offshore of both the east and west coasts. Payments by the federal government will total almost $4 billion for the leases covered by the current agreements after the companies make the agreed-upon investments in projects like natural gas power plants; liquefied natural gas facilities; and oil production, refining, transportation, or storage.[271]

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[268] Memorandum in Support of Federal Defendants' Cross-Motion for Summary Judgment and in Response to Plaintiffs' Motion for Summary Judgment, Green Oceans v. U.S. Dep't of Interior, No. 1:24-cv-00141 (D.D.C. Oct. 9, 2026).

[269] Dan McCarthy, *Major US Offshore Wind Farm Installs Its Last Turbine*, Canary Media (Sept. 18, 2026), https://www.canarymedia.com/articles/offshore-wind/revolution-installs-last-turbine-despite-trump [https://perma.cc/KTL5-LH9J].

[270] Press Release, U.S. Dep't of Interior, *Interior and TotalEnergies Agree to End Offshore Wind Projects, Lowering Costs for American Families* (Mar. 23, 2026), https://www.doi.gov/pressreleases/interior-and-totalenergies-agree-end-offshore-wind-projects-lowering-costs-american [https://perma.cc/4FEM-7HBK]; Press Release, *TotalEnergies Signs Agreements with U.S. Department of Interior to End its U.S. Offshore Wind Projects* (Mar. 23, 2026), https://totalenergies.com/news/press-releases/united-states-totalenergies-signs-agreements-us-department-interior-end-its-us [https://perma.cc/B67Q-TPEK].

[271] *See generally Lease and Grant Information*, BUREAU OF OCEAN ENERGY MGMT., https://www.boem.gov/renewable-energy/lease-and-grant-information [https://perma.cc/RF4D-WEPU] (BOEM's consolidated information about the status of federal wind leases).

Table 2. Offshore wind lease buyout agreements as of October 2026

Company	Agreement Date	Lease location	Maximum payment by US	Investment required
TotalEnergies	March 2026	Carolina Long Bay	$133,333,333	Investments in "(i) oil & gas production [etc.], (ii) liquefied natural gas, (iii) generation or transmission of non-renewable based electricity (including for the sake of clarity [combined gas cycle turbines], (iv) tank farms, and[] (v) any related infrastructures"[272]
TotalEnergies (Attentive Energy, LLC)	March 2026	New York Bight	$795,000,000	Same as TotalEnergies Carolina Long Bay[273]
Bluepoint Wind, LLC	April 2026	New York Bight	$765,000,000	Investments in "(i) oil & gas production, [etc.], (ii) production [etc.] of liquefied natural gas, (iii) generation or transmission of non-renewable based electricity . . . (iv) tank farm and[] (v) any related infrastructures"[274]
Golden State Wind, LLC	April 2026	Morro Bay, California	$120,240,000	Same as Bluepoint[275]
Invenergy Wind Offshore	June 2026	New York Bight - Hudson South	$645,000,000	Investments in "(i) oil & gas production [etc.], (ii) liquefied natural gas, (iii) generation or transmission of non-renewable based electricity (including for the sake of clarity using natural gas combustion turbines in simple or combined cycle), (iv) tank farms; (v) geothermal power projects, and[] (vi) any infrastructures related"[276]

[272] Agreement Between the United States and TotalEnergies Carolina Long Bay, LLC (Mar. 23, 2026), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Carolina%20Bay%20Agreement.pdf?VersionId=HopJI_XAKE1BrLqv9SAPk5bR.RVf4Es6 [https://perma.cc/3CT4-VGYN].

[273] Agreement Between the United States and Attentive Energy, LLC (Mar. 23, 2026), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/4.%20Attentive%20Agreement.pdf?VersionId=uFdQf7xB5VyxvzYkY5K_HN4WtQ.Xqvan [https://perma.cc/U4QJ-XMF9].

[274] Agreement Between the United States and Bluepoint Wind, LLC (Apr. 27, 2026), https://www.boem.gov/renewable-energy/state-activities/bluepoint-settlement-agreement [https://perma.cc/M3QR-KL64].

[275] Agreement Between the United States and Golden State Wind, LLC (Apr. 27, 2026), https://www.boem.gov/renewable-energy/state-activities/golden-state-settlement-agreementpdf [https://perma.cc/UVM7-V8AL].

[276] Settlement Agreement Between the United States and Invenergy Wind Offshore (June 12, 2026), https://www.boem.gov/renewable-energy/state-activities/invenergy-ny-settlement-agreement [https://perma.cc/82FJ-KF26].

Invenergy Wind Offshore	June 2026	Gulf of Maine	$4,416,750	Same as Invenergy New York Bight[277]
Invenergy Wind Offshore	June 2026	Gulf of Maine	$3,669,525	Same as Invenergy New York Bight[278]
Invenergy Wind Offshore	June 2026	California Central Coast	$111,769,231	Same as Invenergy New York Bight[279]
Duke Energy (Cinergy Corp.)	June 2026	Carolina Long Bay	$129,166,667	Investments in "(i) the development of new nuclear generating resources, (ii) an existing nuclear generating facility for the purpose of increasing production capacity of that facility, accelerating incremental production capacity from a nuclear generating facility, or extending the useful life of an existing nuclear generating facility, (iii) a dispatchable generating resource, including energy storage resources, and (iv) any grid infrastructure projects, including transmission infrastructure, related to (i)-(iii) or that would otherwise enhance the reliability and resiliency of the electric grid"[280]
RWE (Canopy Offshore Wind, LLC)	August 2026	California	$121,307,692	Investments in "(i) oil & gas production, gathering, transportation, processing, storage, or refining, (ii) liquefied natural gas, (iii) generation or transmission of non-renewable based electricity (including for the sake of clarity CCGTs), (iv) civil nuclear fuel production, (v) tank farms and[] (vi) any infrastructures related to (i)–(v)," plus "the purchase of U.S.-produced liquefied natural gas"[281]

[277] Settlement Agreement Between the United States and Invenergy Wind Offshore (June 12, 2026), https://www.boem.gov/renewable-energy/state-activities/invenergy-maine-2-settlement-agreement [https://perma.cc/NU9R-24XV].

[278] Settlement Agreement Between the United States and Invenergy Wind Offshore (June 12, 2026), https://www.boem.gov/renewable-energy/state-activities/invenergy-maine-1-settlement-agreement [https://perma.cc/NU9R-24XV].

[279] Settlement Agreement Between the United States and Invenergy Wind Offshore (June 12, 2026), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Invenergy%20CA%20Settlement%20Agreement.pdf [https://perma.cc/X4C6-RWBU].

[280] Settlement Agreement Between the United States and Cinergy Corporation (June 26, 2026), https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Duke%20Settlement%20Agreement.pdf [https://perma.cc/2YXV-RUQR].

[281] Settlement Agreement Between the United States and Canopy Offshore Wind, LLC (Aug. 4, 2026) https://www.boem.gov/sites/default/files/documents/renewable-energy/state-activities/Fully%20Executed%20Settlement%20Agreement%20-%20Canopy.pdf [https://perma.cc/28AY-KD5J].

RWE (Community Offshore Wind, LLC)	August 2026	New York Bight	$1,100,000,000	Same as RWE California[282]
RWE (RWE Offshore US Gulf, LLC)	August 2026	Gulf of Mexico	$4,307,692	Same as RWE California[283]

As an explanation for the agreements, DOI has cited "national security issues" like those it cited as the basis of its five stop-work orders in December 2025. If wind developers had moved forward with developing their leases, DOI stated, BOEM would have issued stop-work orders, which could have led the leaseholder to file suits for breach of contract; the agreements are thus styled as "settlements" of those hypothetical lawsuits.[284] Interior has also touted the agreements as "unleashing affordable, reliable American energy"[285] and asserted that because of the agreements, "American people will no longer pay for ideological subsidies that benefited only the unreliable and costly offshore wind industry."[286]

A coalition of states has sued regarding the administration's deal with TotalEnergies, alleging that the lease cancellation is arbitrary and capricious because DOI failed to adequately explain its decision; that the agency failed to comply with NEPA, which requires an environmental review before undertaking a major federal action that may significantly affect the environment; that the cancellations violated the Outer Continental Shelf Lands Act because they did not follow procedures required by that law; and that no statute authorized DOI to enter a settlement agreement to cancel a wind lease, pay the leaseholder the purchase price of the lease in exchange for its cancellation, or to require the leaseholder to invest that same sum into unrelated activities.[287] The states also allege that the agreement violates the Judgment Fund Act, which governs use of the Judgment Fund, a pool of money set aside to pay judgments against and resolution of litigation against the United States

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[282] Settlement Agreement Between the United States and Community Offshore Wind, LLC (Aug. 4, 2026) https://www.boem.gov/renewable-energy/state-activities/community-offshore-wind-ocs-0539 [https://perma.cc/B5X2-2QVM].

[283] Settlement Agreement Between the United States and RWE Offshore US Gulf, LLC (Aug. 4, 2026) https://www.boem.gov/sites/default/files/documents/renewable-energy/Fully%20Executed%20Agreement%20-%20Gulf.pdf [https://perma.cc/6K9F-ER73].

[284] *See, e.g.*, Settlement Agreement Between the United States and Bluepoint Wind, LLC at 2 (Apr. 27, 2026), https://www.boem.gov/renewable-energy/state-activities/bluepoint-settlement-agreement [https://perma.cc/M3QR-KL64].

[285] *See, e.g.*, Press Release, U.S. Dep't of Interior, *Interior Announces an Energy Agreement to Strengthen American Energy Security and Lower Costs in North Carolina* (June 29, 2026), https://www.doi.gov/pressreleases/interior-announces-energy-agreement-strengthen-american-energy-security-and-lower [https://perma.cc/E3ZU-LKY3].

[286] Press Release, U.S. Dep't of Interior, *Interior and TotalEnergies Agree to End Offshore Wind Projects, Lowering Costs for American Families* (Mar. 23, 2026), https://www.doi.gov/pressreleases/interior-and-totalenergies-agree-end-offshore-wind-projects-lowering-costs-american [https://perma.cc/4FEM-7HBK].

[287] Complaint, New York v. U.S. Dep't of Interior, No. 1:26-cv-01910 (D.D.C. June 2, 2026), https://ag.ny.gov/sites/default/files/court-filings/new-york-et-al-v-united-states-department-of-the-interior.pdf.

where funding is not otherwise available. The states allege that the hypothetical lawsuit to challenge agency action that had not occurred does not constitute "imminent litigation" for which the Fund may be used.[288] California has separately filed suit challenging the agreements with Golden State Wind and Invenergy,[289] other groups of states have challenged agreements with Invenergy and Bluepoint,[290] and states have filed notices of intent to sue over other deals.[291]

G. Limited tax credits, canceled funding, and tariffs

The administration has also changed the financial incentives around offshore wind development more broadly, including by removing or limiting investments and tax incentives created during the Biden administration.

1. Paused distribution of Biden-era funds and limited tax credits

President Trump's January 20, 2025, "Unleashing American Energy" executive order directed agencies to pause the disbursement of funds appropriated through the 2022 Inflation Reduction Act (IRA)[292] and the Infrastructure Investment and Jobs Act[293] related to certain energy sources, including offshore wind, and to review processes, policies, and programs for issuing specified grants, loans, contracts, and other disbursements. A federal district court in March 2025 preliminarily enjoined the administration from enforcing certain directives to pause federal funds under existing

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[288] *Id.* For more discussion of the Judgment Fund issue, *see* Erika Kranz, *A Department Untethered: The Erosion of DOJ Settlement Norms and Implications for Environmental Law*, HARVARD ENV'T & ENERGY LAW PROGRAM (June 2, 2026), https://eelp.law.harvard.edu/a-department-untethered-the-erosion-of-doj-settlement-norms-and-implications-for-environmental-law/.

[289] Complaint, State of California v. U.S. Dep't of Interior, No. 3:26-cv-09123 (N.D. Cal. filed Aug. 28, 2026), https://oag.ca.gov/system/files/attachments/press-docs/ca-v-doi-complaint.pdf (Golden State Wind); Complaint, California v. U.S. Dep't of Interior, No. 4:26-cv-10778 (Sept. 22, 2026), https://www.climatecasechart.com/documents/california-filed-suit-challenging-lawfulness-of-trump-administrations-cancellation-of-invenergy-offshore-wind-lease-via-settlement_41bd (Invenergy).

[290] Complaint, New York v. U.S. Dep't of Interior, 2:26-cv-00453 (D. Maine Sept. 22, 2026), https://ag.ny.gov/sites/default/files/court-filings/new-york-et-al-v-u.s-department-of-the-interior-et-al-complaint-for-declaratory-and-injunctive-relief-2026_0.pdf (Invenergy); New York v. U.S. Dep't of Interior, 1:26-cv-05851 (Sept. 22, 2026), https://ag.ny.gov/sites/default/files/court-filings/new-york-et-al-v-u.s-department-of-the-interior-et-al-complaint-for-declaratory-and-injunctive-relief-2026.pdf (Bluepoint).

[291] Notice of Intent to Sue for Violations of the Outer Continental Shelf Lands Act via Cancellation of Lease Number OCS-P 0561 (Sept. 1, 2026), https://oag.ca.gov/system/files/attachments/press-docs/ocsla-notice-letter-canopy.pdf (giving notice that California intends to sue over RWE's California lease deal).

[292] Pub. L. No. 117-169, 136 Stat. 1818 (2022). The IRA included, for example, $100 million for convening stakeholders and conducting analysis related to interregional transmission development and development of transmission for offshore wind energy. CORRIE E. CLARK, LAURA B. COMAY & DONALD J. MARPLES, CONG. RSCH. SERV., IN11980, OFFSHORE WIND PROVISIONS IN THE INFLATION REDUCTION ACT (Oct. 22, 2024), https://www.congress.gov/crs-product/IN11980.

[293] Pub. L. No. 117-58, 135 Stat. 429 (2021). The Infrastructure Investment and Jobs Act expanded a loan program to include offshore wind vessels and increased funding for a port development program. Allegra Dawes & Sophie Coste, *Aligning Ambitions: State Strategies for Offshore Wind*, CSIS (Sept. 14, 2023), https://www.csis.org/analysis/aligning-ambitions-state-strategies-offshore-wind [https://perma.cc/EF9D-RTQS].

awards (the Court of Appeals for the First Circuit largely upheld that decision in spring 2026).[294] Later in 2025, the OBBBA rescinded unobligated balances for IRA-funded activities, including those that would benefit wind development.[295]

The IRA also created tax credits that offshore wind developers could use either for investment or for production. The OBBBA altered those tax credits as well, narrowing their availability to projects started and constructed on a more accelerated timeline than the IRA required.[296]

After OBBBA was enacted in July 2025, President Trump ordered the Treasury Department to "strictly enforce" the termination of these tax credits.[297] The Internal Revenue Service (IRS) then issued a notice eliminating a longstanding "safe harbor" that allowed project developers to establish the "beginning of construction" by paying or incurring at least 5 percent of the total cost of construction.[298] Cities, state agencies, and organizations challenged the notice. In June 2026, a court vacated the IRS notice, holding that the agency did not satisfactorily explain its reasons for eliminating the safe harbor and failed to account for serious reliance interests.[299] The court agreed that the challengers had standing to have their case heard because, among other things, "the foreseeable effect of [the notice] on future electricity prices inflicts a cognizable injury on electricity consumers," recognizing that a predictable effect of the new policy would be canceled or delayed projects, resulting in "less electricity generation capacity, completed at higher cost, with those costs foreseeably [] passed on to ratepayers in the form of higher prices."[300]

2. Canceled funding for offshore wind-supporting projects

In August 2025, the Department of Transportation announced that it was withdrawing or terminating a total of $679 million in funding that had been awarded under the Biden administration to support projects related to offshore wind. These included funding intended to create a new offshore wind terminal in California that would support construction and maintenance of offshore wind turbines, a grant for an offshore wind logistics and manufacturing hub in Maryland, and terminal and port

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[294] Memorandum and Order, New York v. Trump, No. 25-cv-00039 (D.R.I. Mar. 6, 2025)), https://www.rid.uscourts.gov/sites/rid/files/16112325032NYT.pdf; New York v. Trump, Nos. 25-1236 & 25-1413 (1st Cir. Mar. 17, 2026), https://storage.courtlistener.com/recap/gov.uscourts.rid.58912/gov.uscourts.rid.58912.193.0.pdf.

[295] Extensive litigation regarding the IRA continues. *See Litigation*, INFLATION REDUCTION ACT TRACKER, https://iratracker.org/litigation/ (last accessed Oct. 23, 2026).

[296] *See* CORRIE E. CLARK, LAURA B. COMAY & DONALD J. MARPLES, CONG. RSCH. SERV., IF13034, OFFSHORE WIND: STATUS AND ISSUES FOR THE 119TH CONG. (Oct. 8, 2026), https://www.congress.gov/crs-product/IF13034.

[297] Ending Market Distorting Subsidies for Unreliable, Foreign-Controlled Energy Sources, Exec. Order 14315, 90 Fed. Reg. 30,821 (July 7, 2025), https://www.federalregister.gov/d/2025-12961.

[298] Notice 2025-42, Beginning of Construction Requirements for Purposes of the Termination of Clean Electricity Production Credits and Clean Electricity Investment Credits for Applicable Wind and Solar Facilities, 2025-36 I.R.B. 351 (2025), https://www.irs.gov/pub/irs-irbs/irb25-36.pdf#page=5 [https://perma.cc/H998-PXKX].

[299] Memorandum Opinion, Oregon Env't Council v. Internal Rev. Serv., No. 25-4400, slip op. (D.D.C. June 6, 2026), https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2025cv4400-50.

[300] *Id.* at 22–23.

projects in New York and Massachusetts.[301] The administration called the projects "doomed," "wasteful," and "fantasy wind projects that cost much and offer little," and stated that it would refocus on "unleashing more reliable, traditional forms of energy, and utilizing the nation's bountiful natural resources to unleash American energy."[302]

3. *Wind-targeting tariffs and investigation*

Additionally, in August 2025, the Department of Commerce announced that it was wrapping wind turbines into the category of imports subject to a 50 percent tariff on steel and aluminum content under Section 232 of the Trade Expansion Act of 1962.[303]

Days later, the Department also announced that it was initiating a Section 232 investigation into imports of wind turbines and related components. Section 232 authorizes the Department of Commerce to impose trade restrictions if imports are determined to threaten national security, and the Department solicited comments on, among other things, whether other countries are overproducing and subsidizing wind turbine production in a way that might make the United States over-reliant on foreign turbines and parts and whether "the potential for export restrictions by foreign nations" might allow them to "weaponiz[e] their control over supplies of wind turbines and their parts."[304] As of publication, the Department has not indicated that it has finalized its investigation.[305]

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[301] David Shepardson & Nichola Groom, *Trump Cancels $679 Million in Federal Funding for Offshore Wind Projects*, REUTERS (Aug. 29, 2025), https://www.reuters.com/sustainability/climate-energy/trump-cancels-679-million-federal-funding-offshore-wind-projects-2025-08-29/ [https://perma.cc/GY6B-MGWX]; Press Release, U.S. Dep't of Transp., *Trump's Transportation Secretary Sean P. Duffy Terminates and Withdraws $679 Million from Doomed Offshore Wind Projects* (Aug. 29, 2025), https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-terminates-and-withdraws-679-million [https://perma.cc/ZDB4-EA86].

[302] Press Release, U.S. Dep't of Transp., *Trump's Transportation Secretary Sean P. Duffy Terminates and Withdraws $679 Million from Doomed Offshore Wind Projects* (Aug. 29, 2025), https://www.transportation.gov/briefing-room/trumps-transportation-secretary-sean-p-duffy-terminates-and-withdraws-679-million [https://perma.cc/ZDB4-EA86].

[303] Adoption and Procedures of the Section 232 Steel and Aluminum Tariff Inclusions Process, 90 Fed. Reg. 40326 (Aug. 19, 2025), https://www.federalregister.gov/d/2025-15819 (adding codes corresponding to wind turbines and components).

[304] Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Wind Turbines and Their Parts and Components, 90 Fed. Reg. 41,380 (Aug. 25, 2025), https://www.federalregister.gov/d/2025-16191.

[305] *Section 232 Investigations*, U.S. DEP'T OF COM. BUREAU OF INDUSTRY & SAFETY, https://www.bis.gov/about-bis/bis-leadership-and-offices/SIES/section-232-investigations [https://perma.cc/VG3G-KGTM] (including the investigation on a list of those pending) (last accessed Oct. 16, 2026).