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January 24, 2025

Presidential Memorandum on Wind Energy Designed to Decrease Permitting Efficiency and Increase Uncertainty for Onshore and Offshore Wind Projects



On January 20th, a [Presidential Memorandum](#) was issued which temporarily bars future offshore wind leasing in federal waters and pauses issuance of any federal approvals or loans for both onshore and offshore projects pending a comprehensive interagency review and assessment of federal leasing and permitting practices. Notably, the Memorandum includes multiple directives to certain federal agencies for either comprehensive reviews or reports to the President, none of which have deadlines for completion. In doing so, the Memorandum contradicts the directives in simultaneously-issued executive orders (see [here](#) and [here](#)) that declare an energy emergency and the need to deliver reliable, affordable electricity through efficient and predictable permitting and protect the nation's economic and energy security. Ultimately, the Memorandum appears to be designed to create uncertainty for both the onshore and offshore wind industries, which are delivering dollars, power, jobs, and economic prosperity across the United States.

Section 1: Temporary Withdrawal of Offshore Areas From Leasing for Offshore Wind

Mirroring President Joe Biden's two presidential memoranda on January 6, 2025, directing the withdrawal of certain areas on the outer continental shelf (OCS) from oil and gas leasing (see [here](#) and [here](#)), President Trump invoked section 12(a) of the Outer Continental Shelf Lands Act to "temporarily" withdraw all areas on the OCS from new wind energy leasing. Notably, even though the Memorandum states that this withdrawal does not affect existing leases, it nonetheless directs the Secretary of Interior to "conduct a comprehensive review of the ecological, economic, and environmental necessity of terminating or amending any existing wind energy leases."

Impact:

- All future offshore wind leasing is prohibited until further notice. This includes those lease areas identified in the prior administration's roadmap, including, for example, the Gulf of Mexico auction planned for

2025 and the Central Atlantic 2 auction, planned for 2026.

- According to recent caselaw, the withdrawal of the lease areas can only be revoked by congressional action. In other words, President Trump cannot revoke his own withdrawal.
- The comprehensive review means that even projects that have received all approvals through an extensive National Environmental Policy Act (NEPA) process are at risk of their leases being terminated or amended. While those projects would have better legal grounds to challenge such an action, they no longer can confidently rely on approvals resulting from a leasing process that has been upheld by federal courts or the lengthy environmental review process that has been undertaken.

Section 2. Temporary Cessation and Immediate Review of Federal Onshore and Offshore Wind Leasing and Permitting Practices

Section 2 of the Memorandum issues multiple directives to federal agencies as detailed below.

1. Indefinite Cessation of Approvals for Onshore and Offshore Wind Projects: First, echoing wind opponents' allegations in multiple lawsuits (particularly in the case of offshore wind) of "legal deficiencies" in the federal government's leasing and permitting practices and inadequacies in environmental reviews under NEPA, the Memorandum directs the Secretaries of Interior and Agriculture, the Administrator of the Environmental Protection Agency (EPA) and the heads of all relevant federal agencies to cease issuing 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 focused on the wind project's environmental and economic costs associated with the production of electricity.

Impact:

- The directed cessation does not appear to limit existing operations under valid leases or any agency activities for those projects currently under review. This is consistent with the [Suspension Order](#) issued by the Acting Secretary of Interior on January 22, 2025. Although the memorandum is vague, similar to the Suspension Order, it also does not appear to apply to authorizations necessary to: (1) avoid conditions that might pose a threat to human health, welfare, or safety; or (2) to avoid adverse impacts to public land or mineral resources.
- As with the withdrawal of OCS lands for offshore wind leasing, the comprehensive review and assessment of federal leasing and permitting practices is not time bound. We would expect instructions for implementation of the directive, including any timeline, execution, scope, and type of review for both offshore and onshore wind to appear in a Secretarial Order from the Department of the Interior (DOI) or directive from another relevant agency once new political appointees are installed. It also remains to be seen how the agencies might interpret the applicability of the directive to ongoing activities, including preparation of an EIS.
- In the past, such a review and assessment could take the form of a programmatic environmental review for all wind leases (whether offshore or onshore); supplemental environmental review for those projects for which BOEM and BLM is conducting review and finds "substantial new circumstances or information about the significance of adverse effects that bear on the analysis" (40 C.F.R. § 1502.9(d)(1)(i), (ii)); or another form, such as a report. Note, however, the president's [Executive Order on Unleashing American Energy](#) rescinds the authority for the NEPA regulations of the Council on Environmental Quality and directs revision of all agency NEPA procedures based on guidance on implementing NEPA. This lends more uncertainty as to how an agency would conduct a NEPA review until agency NEPA procedures are updated.
- The cessation is not limited to projects on lands managed by the federal government. Instead, it equally applies to any federal approvals or permits for projects on private land, which currently host the majority of onshore wind projects. These could include, for example, permits issued by the Fish and Wildlife

Service (FWS), EPA, and the Army Corps of Engineers. Note that the FWS already has paused issuance of eagle take permits.

- Note that the Memorandum also directs cessation of activities or approvals for loans for wind projects. Any projects waiting for federal approvals of applications for funding could be impacted.
- The cessation could also have an indirect impact on transmission infrastructure projects that are dependent on generation of electricity from energy projects that may still be waiting on federal approvals, including financing or funding from the federal government.

2. Environmental Impact and Cost to Surrounding Communities: The Secretaries of Interior and Energy and the EPA Administrator are directed to assess the environmental impact and cost to surrounding communities of defunct and idle “windmills” and to deliver a report to the president with their findings and recommended authorities to require the removal of such windmills.

Impact:

- Once again, this section does not provide a deadline for delivery of this report, nor does it identify a lead agency to conduct the assessment. The mechanism to operationalize the development and potential implementation of the report remains to be seen as well.

3. Providing Notice of Order to Courts: Finally, Section 2 provides that the attorney general may provide notice of this order to any court with jurisdiction over pending litigation related to any aspect of the federal leasing or permitting of onshore or offshore wind projects and may request that the court stay the litigation or otherwise delay further litigation.

Impact:

- There are cases currently pending against DOI and the National Oceanic and Atmospheric Administration that are challenging the approval of certain wind projects. This directive implicitly encourages the Department of Justice to submit the Memorandum to the relevant district or circuit court to request either a stay or a delay in those cases. Delays will once again increase uncertainty for the projects, developers, and investors.
- There is no definition of “further” litigation, which suggests the Attorney General could decide not to defend any suit filed against Interior or other agencies challenging the federal leasing or permitting for any wind project.

Bottom line:

This Memorandum leads to a perfect storm driven by the president’s misunderstanding of wind energy. While it delivered the expected indefinite withdrawal of OCS lands for offshore wind leasing and a pause on federal offshore wind permits, its expansion to onshore wind permitting and leasing creates a broader range of issues. The inconsistency with other executive actions designed to boost energy production will result in complete uncertainty for projects at any stage of the development process. It seems inevitable that some directives in the Memorandum will be challenged in federal court. All project developers and investors should therefore take heed.

Authors

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