

## Comment Deadlines Loom on High-Profile Climate and Environmental Actions

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The Biden Administration has started 2023 with a jammed pipeline of major regulatory actions relating to climate and other major environmental matters. For those interested in participating in the public comment processes, the clock is ticking. Here is a rundown of impending deadlines for public comment for some of the most significant rulemakings from the EPA and other federal agencies.

### **Fifth National Climate Assessment (NCA5)**

- **Public Comment Deadline: January 27, 2023.**
- NCA5 Third Order Draft is available for review and comment at the [USGCRP Review and Comment System](#).<sup>[1]</sup>
- NCA5 satisfies the Global Change Research Act requirement for the U.S. Global Change Research Program (USGCRP) to prepare and submit to the President and Congress a quadrennial National Climate Assessment (NCA), which is a technical scientific assessment of the science and impacts of the USGCRP's findings.<sup>[2]</sup>
- The USGCRP is seeking comments on the draft NCA5, which covers multiple topics including physical science, chapters on national and regional analysis, and responses to the findings, including adaptation and mitigation.

### **Bureau of Land Management's Proposal to Reduce Waste of Natural Gas**

- **Public Comment Deadline: January 30, 2023.**
- Waste Prevention, Production Subject to Royalties, and Resource Conservation, 87 Fed. Reg. 73588 (Nov. 30, 2022).
- The BLM is proposing new regulations to reduce the waste of natural gas from venting, flaring, and leaks during oil and gas production activities on Federal leases and Indian and Tribal leases. The proposed rule outlines requirements for operators of Federal and Indian oil and gas leases to mitigate waste and provides for royalty payments to the public and Tribal mineral owners as compensation for wasted gas.

### **Principles for Climate-Related Financial Risk Management for Large Financial Institutions**

- **Public Comment Deadline: February 6, 2023.**

- Principles for Climate-Related Financial Risk Management for Large Financial Institutions, 87 Fed. Reg. 75267 (Dec. 8, 2022).
- The Board of Governors of the Federal Reserve System (Board) is preparing draft principles for a high-level framework on the management of exposures to climate-related financial risks for Board-supervised financial institutions with over \$100 billion in assets.<sup>31</sup>
- The Board is seeking comments on all aspects of the draft, specifically on the challenges a financial institution may face in managing climate-related financial risks; the specificity of the draft principles based on current data and understanding of these risks; and what challenges financial institutions could face when incorporating the draft principles into risk management frameworks.

### **Renewable Fuel Standard Program**

- **Public Comment Deadline: February 10, 2023.**
- Renewable Fuel Standard Program: Standards for 2023–2025 and Other Changes, 87 Fed. Reg. 80582 (Dec. 30, 2022).
- This rule proposes volume targets and applicable percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel for 2023–2025. The rule also proposes regulation to govern Renewable Identification Numbers (RINs) for electricity made from renewable biomass (eRINs) and other regulatory changes regarding the operation of the RFS Program.

### **Disclosure of Emissions by Federal Contractors**

- **Public Comment Deadline: Extended to February 13, 2023.**
- Federal Acquisition Regulation: Disclosure of Greenhouse Gas Emissions and Climate-Related Financial Risk, 87 Fed. Reg. 68312 (Nov. 13, 2022).
- The DoD, GSA, and NASA are proposing to revise the Federal Acquisition Regulation (FAR) to require major Federal suppliers to publicly disclose greenhouse gas (GHG) emissions and climate-related financial risk. The proposed rule will also require some major Federal suppliers to complete an annual climate disclosure with science-based reduction targets.

### **EPA Methane Emission Guidelines**

- **Public Comment Deadline: February 13, 2023.**
- Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review, 87 Fed. Reg. R 74702 (Dec. 6, 2022).
- This proposal aims to update and expand the standards first proposed in November 2021 to reduce emissions of methane and other air pollution from new and existing sources in the oil and gas industry. This proposal will add requirements for sources previously not covered that the EPA proposes will achieve more comprehensive emission reductions. The proposal will provide additional requirements for states and Tribal Nations that are developing plans to reduce methane emissions and includes Clean Air Act standards the EPA proposes to incentivize early implementation of reduction technologies and to support mitigation and monitoring activities.<sup>32</sup>

### **Social Cost of Greenhouse Gases Report**

- **The EPA is soliciting public comment on the sensitivity analysis through the docket in the proposed emissions rule above. Docket ID No. EPA-HQ-OAR-2021-0317.**
- Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances.<sup>33</sup>
- As a part of the EPA's Proposed Rulemaking on oil and gas emissions above, the EPA has prepared a sensitivity analysis that includes a new set of values for the social cost of greenhouse gases (SC-GHG). This report presents

the methodology underlying these new SC-GHG values. In addition to public comment, the EPA is conducting an external peer review of the draft report.<sup>[6]</sup>

### **National Ambient Air Quality Standards (NAAQS) for Particulate Matter**

- **Public Comment deadline: Sixty days after publication in the Federal Register (approximately March 6, 2023).**
- Reconsideration of the National Ambient Air Quality Standards for Particulate Matter, pending publication in the Federal Register.<sup>[7]</sup>
- The EPA proposes to revise the primary (health-based) annual PM<sub>5</sub> standard from its current level to a lower level and revise other aspects of the PM NAAQS. The rule proposes not to change the current secondary (welfare-based) annual PM<sub>2.5</sub> standard, the primary and secondary 24-hour PM<sub>2.5</sub> standards, and primary and secondary PM<sub>10</sub> standards.
- Although not facially a “climate” rule, the primary sources of PM<sub>5</sub> emissions regulated under the Clean Air Act are “combustion” sources.

### **NEPA Guidance on Consideration of Greenhouse Gases and Climate Change**

- **Public Comment Deadline: March 10, 2023.**
- Guidance: National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions and Climate Change, 88 Fed. Reg. 1196 (Jan. 9, 2023).
- This interim guidance is effective immediately, while public comments are being received. The guidance directs federal agencies on how to consider the effects of greenhouse gas and climate change when evaluating proposed, major Federal actions under the National Environmental Policy Act (NEPA).

### **Revised Definition of “Waters of the United States”**

- **The Rule was announced December 30, 2022 and will become effective 60 days after publication in the Federal Register, and public comment will be accepted during that period.**
- Revised Definition of “Waters of the United States,” pending publication in the Federal Register.
- As described in a prior [client alert](#), the EPA is proposing to formally adopt the post-*Rapanos* “significant nexus” and “continuous surface water connection” regime for identifying “waters of the United States” subject to the Clean Water Act into the Code of Federal Regulations.<sup>[8]</sup>

For further information or questions about the upcoming notice and comment deadlines, please contact Jonathan D. Brightbill (Partner, White Collar, Regulatory Defense & Investigations/Environmental Litigation), Courtney Rimann (Associate, Litigation), or your Winston relationship attorney.

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<sup>[1]</sup> Availability for Public Comment on the Draft Fifth National Climate Assessment (NCA5) United States Global Change Research Program, 87 Fed. Reg. 67873 (Nov. 10, 2022).

<sup>[2]</sup> *Fifth National Climate Assessment*, U.S. Global Change Research Program, <https://www.globalchange.gov/nca5>.

<sup>[3]</sup> *Proposed Risk Management Guidance on Climate-Related Financial Risks for Large Financial Institutions*, Board of Governors of the Federal Reserve System (Nov. 23, 2022), <https://www.federalreserve.gov/newsevents/pressreleases/files/other20221202b2.pdf>.

<sup>[4]</sup> *EPA’s Supplemental Proposal to Reduce Pollution from the Oil and Natural Gas Industry to Fight the Climate Crisis and Protect Public Health: Overview*, EPA (Nov. 11, 2022), <https://www.epa.gov/system/files/documents/2022-11/Oil%20and%20Gas%20Supplemental.%20Overview%20Fact%20Sheet.pdf>.

<sup>[5]</sup> *EPA External Review Draft of “Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific Advances,”* EPA (Nov. 11, 2022), <https://www.epa.gov/environmental-economics/scqhg>.

<sup>69</sup> See *id.*

<sup>71</sup> *Proposed Decision for the Reconsideration of the National Ambient Air Quality Standards for Particulate Matter (PM)*, EPA (Jan. 6, 2023), <https://www.epa.gov/pm-pollution/proposed-decision-reconsideration-national-ambient-air-quality-standards-particulate>.

<sup>88</sup> See *Final Rule: Revised Definition of "Waters of the United States" Fact Sheet*, EPA (December 2022), <https://www.epa.gov/system/files/documents/2022-12/Public%20Fact%20Sheet.pdf>.

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