

GIBSON DUNN



Energy Regulation & Litigation Update

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In Response to Executive Order, FERC Phases Out 53 Regulations

This update provides background on the EO, analyzes how FERC interpreted the EO, and identifies and categorizes the 53 regulations which FERC chose to sunset.

I. Introduction

On October 1, 2025, the Federal Energy Regulatory Commission (FERC) issued Order No. 913 as a direct final rule, adding a sunset provision to 53 existing regulations it deemed “outdated, seldomly used, or duplicative,”^[1] along with a companion notice of proposed rulemaking that provides a proceeding in which FERC can address any “significant adverse comments” in response to Order No. 913,^[2] in response to Executive Order 14270 “Zero-Based Regulatory Budgeting to Unleash American Energy”^[3] (EO).

On balance, FERC’s Order No. 913 is unlikely to have much practical effect on the entities it regulates. Many of the 53 regulations FERC selected to sunset already lacked binding effect prior to the Order or contained procedural requirements that were “not in general use.”^[4] The 53 sunset regulations represent, in FERC’s own words, “regulatory housekeeping”^[5]—a noble objective, but not one that necessarily achieves the EO’s policy goal to “[u]nleash American [e]nergy.”

Order No. 913, which uses an expedited procedure for “non-controversial regulatory amendments,” is unlikely to garner controversy. Instead, Order No. 913 is more interesting in that it responds to a broad substantive mandate with a modest package of administrative reforms.

FERC's modest rule may be the result of FERC balancing the EO's requirement that FERC make reforms in under six months with the Administrative Procedure Act's requirement of a lengthy notice and comment period for substantive changes to the agency's regulations. Taken together, these competing requirements may explain why FERC chose to respond to the EO with a "non-controversial regulatory amendment," which exempts it from the full notice and comment rulemaking process while still allowing it to formally eliminate 53 regulations.

II. Background on Executive Order 14270

Order No. 913 directly responds to Executive Order 14270, which set a deadline of inserting sunset provisions into all "covered regulations" by September 30, 2025.

If interpreted broadly, "covered regulations" under the EO *could potentially* have included large swaths of FERC's rules. The EO directed agencies, "consistent with applicable law," to insert sunset provisions in all regulations adopted pursuant to specific statutes listed for each agency, which, for FERC, included any rules issued pursuant to (i) the Federal Power Act; (ii) the Natural Gas Act; and (iii) the Powerplant and Industrial Fuel Use Act. However, the EO does not apply to "regulatory permitting regimes authorized by statute,"^[6] which would exempt FERC's regulations related to permitting activities under the above statutes, including permitting for natural gas infrastructure under the Natural Gas Act, as discussed in Section III in greater detail.

The EO's sunset provisions seeks to phase out regulations over a year while providing a mechanism to extend such regulations for up to five years. Additionally, the EO requires agencies to include sunset provisions that provide a one-year period for the public to file "request[s] for information" or "to comment on the cost and benefits of the regulations."^[7] Immediately after an agency inserts a sunset provision into a regulation, the EO also directs agencies to consider that regulation no longer effective. If, after the public comment period, "an agency finds an extension is warranted," agencies may extend sunset dates for covered regulations up to five years into the future.^[8]

III. FERC's Implementation of the EO

FERC implements the EO's exceptions in a way that narrows the potential category of "covered regulations" from potentially hundreds of rules to the 53 regulations it selected. As limiting elements, the EO requires implementation "consistent with applicable law" and exemptions for "regulatory permitting regimes authorized by statute." FERC interpreted these carve-outs broadly. First, using the EO's "consistent with applicable law" provision, Order No. 913 states FERC did not consider regulations that it determined were "necessary to fulfill the Commission's statutory mandates to ensure reliable, safe, secure, and economically efficient energy for consumers at a reasonable cost."^[9] Second, under the EO's regulatory permitting regimes exception, FERC also did not consider any "regulations that provide standards and requirements for Commission license and permit holders or applicants."^[10] Third, because the EO only listed three statutes for FERC to review, FERC did not consider sunseting any regulations issued pursuant to statutes other than the "three specific statutes" mentioned by name in the EO.^[11]

Though Order No. 913 directly responds to the EO, FERC also stated its agreement these regulations *should* be sunset. Order No. 913 states that “based on its independent policy judgment,” FERC views sunset of the selected rules as an appropriate form of “regulatory housekeeping.”^[12] As part of this policy judgment, Order No. 913 also provides explanations for each regulation it sunset, which are summarized in Section IV.

Procedurally, FERC chose to issue Order No. 913 as a direct final rule, which is an expedited form of rulemaking reserved for “non-controversial regulatory amendments.”^[13] This choice reflects not only urgency in meeting the EO’s deadline but also the generally noncontroversial nature of sunset of these particular regulations. Under the direct final rule, Order No. 913 will become effective 45 days after its publication in the Federal Register unless FERC receives “significant adverse comments” on any part of Order No. 913 within 30 days of publication. If FERC does receive such comments, then FERC will “withdraw any such part” of Order No. 913 and issue a separate, “subsequent final rule” after addressing those comments, or “take other action as appropriate.”^[14]

IV. The Scope of Order No. 913: All 53 Sunset Regulations, Listed and Categorized

The rules can be categorized into 7 major groups:

- 18 rules that rely on repealed statutes;
- 11 rules that deal with filing requirements that are in FERC’s words “not in general use”;
- eight (8) rules that deal with obsolete practices;
- six (6) rules that duplicate requirements present in other rules;
- four (4) rules that rely on repealed regulations;
- four (4) rules that were transitional regulations from the outset; and
- two (2) “rules” that are informational rather than mandatory.

Dubbed “regulatory housekeeping” by FERC, elimination of rules in these categories is unlikely to create meaningful change for FERC-regulated entities.^[15] Based on FERC’s own explanations, few of the sunset regulations even had a binding effect prior to Order No. 913. Over one-third of the sunset regulations are based on repealed statutory provisions, and another one-fifth are filing requirements “not in general use.”^[16] This approach allows FERC to issue a legally defensible rule, but it also means the rule will have limited practical effect. In a year’s time, these regulations will fully sunset. However, sunset of these 53 regulations is likely to have little meaningful effect in achieving the EO’s objective to “Unleash American Energy.”

The following is a list of all 53 regulations that FERC sunsets in Order No. 913, along with a brief summary of FERC’s reasoning why each is no longer necessary:

Duplicative:

1. 18 C.F.R. § 2.15 – Provides duplicative method of calculating rate of return for computing amortization reserves for hydroelectric project licenses;
2. 18 C.F.R. § 2.26 – Provides requirements duplicative of 18 C.F.R. Part 33;
3. 18 C.F.R. § 157.218 – Provides requirements duplicative of 18 C.F.R. § 154.111;
4. 18 C.F.R. § 385.602(c)(1)(ii) – Requires duplicative explanatory statement requirement for submission of settlement offers;
5. 18 C.F.R. § 385.915 – Duplicative of identical requirement in Rule 2201;
6. 18 C.F.R. § 385.1012 – Duplicative of identical requirement in Rule 2201;

Obsolete:

7. 18 C.F.R. § 2.18 – Deals with phased rate increase filings, which the Commission no longer receives;
8. 18 C.F.R. § 2.21 – Deals with Regional Transmission Groups, which have been replaced by RTOs and ISOs;
9. 18 C.F.R. § 2.25 – Deals with ratemaking prior to transition to market-based rates;
10. 18 C.F.R. § 2.78 – Deals with bundled gas transmission services and commodity sales; in 1992, FERC Order No. 636 required pipelines to unbundle services;[\[17\]](#)
11. 18 C.F.R. § 2.103 – Deals with bundled gas transmission services and commodity sales; in 1992, FERC Order No. 636 required pipelines to unbundle services;
12. 18 C.F.R. § 2.105 – Deals with bundled gas transmission services and commodity sales; in 1992, FERC Order No. 636 required pipelines to unbundle services;
13. 18 C.F.R. § 156.5(a)(9) – Deals with bundled gas transmission services and commodity sales; in 1992, FERC Order No. 636 required pipelines to unbundle services;
14. 18 C.F.R. § 157.14(a)(11) – Deals with bundled gas transmission services and commodity sales; in 1992, FERC Order No. 636 required pipelines to unbundle services;

Existed Only as Transitional Regulations to Begin With:

15. 18 C.F.R. § 5.31 – Only operative from 2003 to 2005;
16. 18 C.F.R. § 375.104 – Only operative during 1977 transition creating FERC;
17. 18 C.F.R. § 375.105 – Only operative during 1977 transition creating FERC;
18. 18 C.F.R. § 385.101(b)(3) – Only operative before FERC promulgated its own oil pipeline regulations; prior to promulgating its own oil pipeline regulations, FERC used this section to rely on the Surface Transportation Board's regulations in 49 C.F.R. Chapter X;

Non-Mandatory Requirements:

- 19. 18 C.F.R. § 2.27 – Provides NAESB smart grid standards as non-mandatory guidance;
- 20. 18 C.F.R. § 131.52 – Provides a sample form of a Certificate of Concurrence informationally;

Relied on Repealed Regulations:

- 21. 18 C.F.R. § 157(b)(9) – Provides an unused definition of “right of way grantor”;
- 22. 18 C.F.R. § 385.504(b)(19) – Provides for rulings on a since repealed Rule 717;
- 23. 18 C.F.R. § 385.902(b)-(c) – References orders issued pursuant to repealed regulations;
- 24. 18 C.F.R. § 385.904(b) – References orders issued pursuant to repealed regulation;

Relied on Repealed Statutes:

- 25. 18 C.F.R. § 287.101 – Issued under PIFUA, which was repealed in 1987;
- 26. 18 C.F.R. § 385.1101 – Issued under a repealed section of the Natural Gas Policy Act;
- 27. 18 C.F.R. § 385.1102 – Issued under a repealed section of the Natural Gas Policy Act;
- 28. 18 C.F.R. § 385.1103 – Issued under a repealed section of the Natural Gas Policy Act;
- 29. 18 C.F.R. § 385.1104 – Issued under a repealed section of the Natural Gas Policy Act;
- 30. 18 C.F.R. § 385.1105 – Issued under a repealed section of the Natural Gas Policy Act;
- 31. 18 C.F.R. § 385.1106 – Issued under a repealed section of the Natural Gas Policy Act;
- 32. 18 C.F.R. § 385.1107 – Issued under a repealed section of the Natural Gas Policy Act;
- 33. 18 C.F.R. § 385.1108 – Issued under a repealed section of the Natural Gas Policy Act;
- 34. 18 C.F.R. § 385.1109 – Issued under a repealed section of the Natural Gas Policy Act;
- 35. 18 C.F.R. § 385.1110 – Issued under a repealed section of the Natural Gas Policy Act;
- 36. 18 C.F.R. § 385.1111 – Issued under a repealed section of the Natural Gas Policy Act;
- 37. 18 C.F.R. § 385.1112 – Issued under a repealed section of the Natural Gas Policy Act;
- 38. 18 C.F.R. § 385.1113 – Issued under a repealed section of the Natural Gas Policy Act;
- 39. 18 C.F.R. § 385.1114 – Issued under a repealed section of the Natural Gas Policy Act;
- 40. 18 C.F.R. § 385.1115 – Issued under a repealed section of the Natural Gas Policy Act;
- 41. 18 C.F.R. § 385.1116 – Issued under a repealed section of the Natural Gas Policy Act;
- 42. 18 C.F.R. § 385.1117 – Issued under a repealed section of the Natural Gas Policy Act;

Filing Requirements not in “General Use”

43. 18 C.F.R. § 131.50 – Informational requirement that was not enforced;
44. 18 C.F.R. § 36.1(b)(1) – Requires form of notice no longer enforced for applications for transmission service under Federal Power Act;
45. 18 C.F.R. § 153.20(c) – Identified where to file paper export/import applications, which can now be filed online;
46. 18 C.F.R. § 157.6(a)(2) – Required providing a paper copy of maps and diagrams, which can now be provided online;
47. 18 C.F.R. § 157.6(b)(7) – Required form of notice no longer enforced;
48. 18 C.F.R. § 157.205(b)(5) – Required form of notice no longer enforced for applications for Interstate Pipeline Blanket Certificates;
49. 18 C.F.R. § 300.10 – Required form of notice no longer enforced for applications for Rates of Federal Power Marketing Administrations;
50. 18 C.F.R. § 366.4(b)(1), (3) and (c)(1), (2) – Required form of notice no longer enforced for persons who file FERC-65A; persons that file a petition for exemption; persons who file FERC-65B; persons that file a petition for exemption;
51. 18 C.F.R. § 366.7(a), (b) – Required form of notice no longer enforced for “Persons that file a notice of self-certification” or “Persons who file petitions” for exempt wholesale generator status or foreign utility company status;
52. 18 C.F.R. § 385.203(d) – Required form of notice no longer enforced for categories of tariffs and rate filings;
53. 18 C.F.R. § 385.206(b)(10) – Required form of notice no longer enforced for complaints;

[\[1\]](#) *Implementation of the Executive Order Entitled “Zero-Based Budgeting to Unleash American Energy,”* Order No. 913, 193 FERC ¶ 61,002 (Oct. 1, 2025) .

[\[2\]](#) *Implementation of the Executive Order Entitled “Zero-Based Budgeting to Unleash American Energy,”* Notice of Proposed Rulemaking, 193 FERC ¶ 61,001 (Oct. 1, 2024) (hereinafter NOPR).

[\[3\]](#) Exec. Order No. 14270, 90 FR 15643 (Apr. 9, 2025).

[\[4\]](#) Order No. 913 at P 36.

[\[5\]](#) *Id.* at P 10.

[\[6\]](#) EO, Section 5(c).

[\[7\]](#) EO, Section 4(d); *see also* Order No. 913 at PP 1, 7; NOPR at PP 1, 7.

[\[8\]](#) EO, Section 4(d).

[9] Order No. 913 at P 5.

[10] *Id.*

[11] *Id.*

[12] *Id.* at P 10.

[13] *Id.* at P 2.

[14] *Id.*

[15] *Id.* at P 10.

[16] *Id.* at P 36.

[17] See *Pipeline Service Obligations and Revisions to Regulation Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol*, Order No. 636, 59 FERC ¶ 61,030 (1992).

The following Gibson Dunn lawyers prepared this update: William R. Hollaway, Ph.D., Tory Lauterbach, Janine Durand, Jess Rollinson, and John Weed*.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. To learn more about these issues or for assistance with data center energy supply issues, such as preparing comments to be filed in the above-discussed proceedings, please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm's Energy Regulation and Litigation practice group, or the following members of the firm's Energy team:

Energy Regulation and Litigation:

William R. Hollaway, Ph. D – Washington, D.C. (+1 202.955.8592, whollaway@gibsondunn.com)

Tory Lauterbach – Washington, D.C. (+1 202.955.8519, tlauterbach@gibsondunn.com)

Power and Renewables:

Peter J. Hanlon – New York (+1 212.351.2425, phanlon@gibsondunn.com)

Nicholas H. Politan, Jr. – New York (+1 212.351.2616, npolitan@gibsondunn.com)

Cleantech:

John T. Gaffney – New York (+1 212.351.2626, jgaffney@gibsondunn.com)

Daniel S. Alterbaum – New York (+1 212.351.4084, dalterbaum@gibsondunn.com)
Adam Whitehouse – Houston (+1 346.718.6696, awhitehouse@gibsondunn.com)

Oil and Gas:

Michael P. Darden – Houston (+1 346.718.6789, mpdarden@gibsondunn.com)
Rahul D. Vashi – Houston (+1 346.718.6659, rvashi@gibsondunn.com)

**John Weed, a law clerk in the firm's Washington, D.C. office, is not yet admitted to practice law.*

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