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**MINE** Update  
MINING INDUSTRY NEWS E-COMM UPDATE

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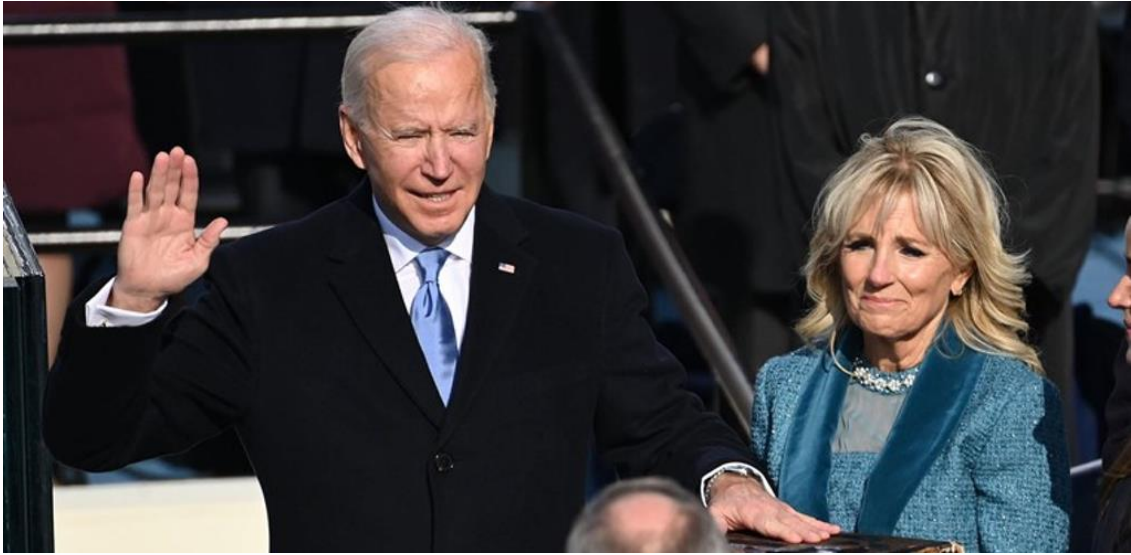
Issue 15 | January 21, 2021

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## **This Week in The News**

President Joe Biden and Vice President Kamala Harris took the oath of office yesterday, kicking off a new policymaking era in which the agendas of both the Executive and Legislative branches of the federal government will be steered by the Democratic Party for at least the next two years. In the wake of a historically contentious election, actions at the White House and Congress are expected to move rapidly over the next several months. The National Mining Association (NMA) remains focused on actively engaging to advance mining's interests at both ends of Pennsylvania Avenue. Plus we have updates on how energy and mining markets are faring.



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## Safety Share

Driving safely in winter weather can be a challenge for even the most experienced driver. National Highway Traffic Safety Administration [has some advice](#).

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## D.C. Circuit Strikes Down EPA's Affordable Clean Energy Rule

On the day before Inauguration, the U.S. Court of Appeals for the District of Columbia Circuit issued a lengthy [decision](#) striking down the Affordable Clean Energy (ACE) rule. The ruling dealt a blow to the Trump administration's efforts to strictly interpret the Clean Air Act (CAA) and limit the U.S. Environmental Protection Agency's (EPA) authority to regulate greenhouse gas emissions at coal-fired power plants. *American Lung Association v. EPA*, No. 19-1140 (filed Jan. 19, 2021). Fundamentally, the court rejected EPA's arguments that CAA section 111(b) expressly foreclosed consideration of measures other than those that apply at and to the individual source or "within the fence line." The NMA is currently assessing our legal options for appeal. Please see NMA's Jan. 19 [memo](#) for additional details on the ruling.

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## Forest Service Proposed Rule Updating Locatable Mineral Regulations

The Forest Service this week released on its website the [prepublication version](#) of revisions to its locatable minerals regulations under 30 CFR Part 228A. The stated intent of the revisions is to "better govern operations under the mining laws" and "to improve the efficiency of Forest Service regulation . . . including the review and approvals for plans of operations." The fate of the proposal, including appearance in the *Federal Register*, is unclear given the change in administration. The document is nonetheless of interest as providing insight into how the agency intended to address changes to facilitate exploration activities long-advocated by the NMA. See the NMA's Jan. 21 [memo](#) for a summary of the provisions related to notice-level operations and financial guarantees.

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## Administration Releases List of Regulations Targeted for Review

Yesterday, the administration released a list of regulations targeted by the transition team for review. Included on the list are several high priority NMA issues including reconsideration of the following: the Council on Environmental Quality's National Environmental Policy Act reforms; the Department of the Interior's lifting of the federal coal leasing moratorium; and the Environmental Protection Agency's determination that additional financial assurance was unwarranted for the hardrock mining industry. Please see NMA's [memo](#) of Jan. 20 for the full list.

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## White House Issues Regulatory Freeze Memo

Yesterday afternoon, White House Chief of Staff Ron Klain issued the “regulatory freeze” [memorandum](#) that typically accompanies changes in administration. As expected, the memo directs department and agency heads to essentially pause the rulemaking process to allow the new administration to review any new or pending rules. While there are exceptions for emergency circumstances or statutory and judicial deadlines, during the regulatory freeze:

- No additional rules may be proposed or issued until reviewed and approved by a department or agency head;
- Rules that have been sent to the Office of the Federal Register but not published are immediately withdrawn for review; and
- Rules that have been published but are not yet effective will likely be postponed for a minimum of 60-days with the potential for a new 30-day comment period.

The memorandum broadly defines “rule” to include guidance documents and includes within its scope any “agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.” For your convenience, NMA has compiled a [list](#) of association priorities that are subject to the regulatory freeze.

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## The NMA Congressional Review Act "Watch List"

The Congressional Review Act (CRA) provides a mechanism for Congress to review agency regulations and nullify them through a joint resolution of disapproval. CRA resolutions must pass in both Houses and be signed by the President. The act, however, does provide for expedited Senate consideration requiring only a simple majority to pass CRA resolutions. The CRA allows any rule promulgated less than 60 legislative days before the end of a congressional session to be reviewed again beginning on the 15th legislative day of the next congressional session. Calculating the regulatory “look back” period is complex, but it appears that the new Congress will have the opportunity to review any rule issued after Aug. 21, 2020. Use of the CRA may be tempered by the law’s requirement that the agency promulgating the original regulation may not promulgate another regulation “substantially similar” to the repealed regulation. Please see NMA’s [“watch list”](#) for priority association issues that fall within the CRA look back period.

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## FERC Advances MOPR at Pre-Inauguration Meeting

The Federal Energy Regulatory Commission (FERC) moved up the date for its January monthly meeting to the day before the Inauguration and issued an order advancing the implementation of PJM’s minimum offer price rule (MOPR) proceeding. The order accepted, in part, and rejected, in part, PJM’s latest compliance filing. The order found that

most of PJM's filing was in compliance with the previous Compliance Order issued October 15, 2020, but rejected one provision added by PJM regarding the market seller offer cap that exceeds the directives of the underlying order. The order also denied the Market Monitor's request for clarification of the Compliance Order regarding replacement capacity and fixed resource requirement revenue.

Tuesday's meeting was the last with Chairman Danly leading the commission and the first for new Republican commissioner and former Virginia regulator Mark Christie. This morning President Biden appointed Democrat Commissioner Glick as Chairman. Glick has been a vocal opponent of the MOPR and, as chairman, will now drive the commission's agenda. With Commissioner Neil Chatterjee (whose term expires in June 2021) and new Democrat Commissioner Alison Clements rounding out the other slots, FERC is operating with a full five-member commission for the first time in years.

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## DOE Activities to Support a Domestic Minerals Supply

On January 15, the Department of Energy (DOE) announced new efforts to strengthen domestic critical mineral supply chains. The first is a new [rule](#) from the Loan Programs Office (LPO) to amend policies and procedures for the issuance of loan guarantees under the Title XVII and Advanced Technology Vehicles Manufacturing programs as well as refinements to the definition of what constitutes an "eligible project" for both programs. The new rule follows [guidance](#) issued by the LPO in December, after which the NMA set up a meeting between LPO senior advisors and more than a dozen interested NMA member companies to discuss lending opportunities for eligible critical minerals projects.

The second announcement by DOE was the establishment of the [Division of Minerals Sustainability](#) within the Office of Fossil Energy focused on securing a domestic supply chain of critical minerals to support energy, manufacturing, and the defense sectors. For additional information on the LPO rule and the Division of Minerals Sustainability, please find the NMA's memo [here](#). The NMA will continue to work with the LPO to ensure greater

access to lending capacity for eligible critical minerals projects and be a resource for the newly created Fossil Energy division to support their efforts.

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## Administration Filling Out Leadership Posts

With yesterday's inauguration, President Biden swore in approximately 1,000 new administration officials filling political appointments not only in the [White House](#) but in key [positions across federal agencies and departments](#). Officials with initial transition teams have now phased out with permanent staff taking their place and filling further roles. The NMA will keep you advised of on key political positions immediately taking their roles while we await further announcements for deputy roles, assistant secretaries, and assistant administrators.

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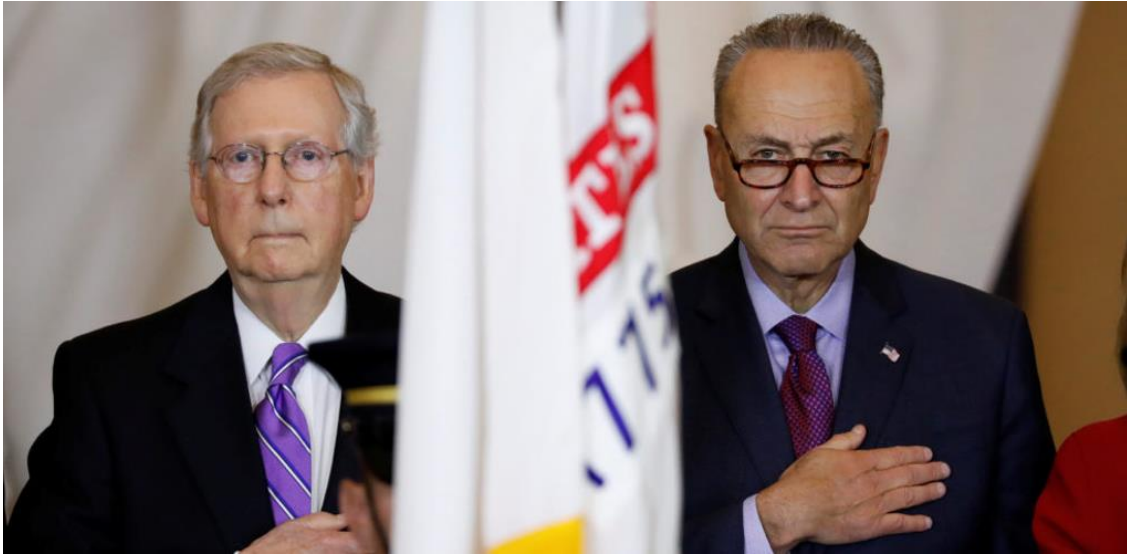
## Congressional Committee Leadership

Democrats are now officially in charge of the Senate, following the swearing in of Democratic Sens. Jon Ossoff and Raphael Warnock of Georgia and Alex Padilla of California by Vice President Kamala Harris. Wednesday marked the first time in six years that Democrats have held the Senate majority and cemented full Democratic control of Washington for the first time in a decade.

With the Senate's even 50-50 split, Senate Majority Leader Chuck Schumer (D-N.Y.) and Senate Minority Leader Mitch McConnell (R-Ky.) will need to finalize a power-sharing agreement to determine committee memberships and establish the Senate floor schedule and procedure.

In the House, the Democrat and Republican caucuses have announced their committee leaders and some subcommittee leaders such as naming Congressman Paul Tonko (D-N.Y.) and Congressman David McKinley (R-W.Va.) as chairman and ranking member of the Energy and Commerce Subcommittee on the Environment and Climate Change

respectively, but they have yet to finalize all committee assignments and subcommittee leadership roles. Please find [here](#) a list of committee leadership important to the mining industry.



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## Trade Webinar

The NMA is hosting a webinar on Thursday, January 28 from 12:00 – 1:30 p.m. (Eastern) to assist in development of the associations trade priorities for 2021. Suzanne Richter, founder of the [Global Trade Academy](#) will provide a presentation on pivotal trade matters. Suzanne is a seasoned customs compliance and global supply chain subject matter expert with extensive experience in import and export regulations, global cargo security programs and Free Trade Agreements. Please see NMA [memo](#) of Jan. 5 for additional information about participation.

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## NMA and Third-Party Voices

In addition to the [NMA's statement issued last week](#) concerning the inauguration, Rich Nolan yesterday [congratulated President Biden and Vice President Harris](#) and

reiterated our industry's desire to work with the administration.

[E&E Daily](#) quotes Rich Nolan in a report on how fossil fuel companies are tweaking their lobbying strategies ahead of Joe Biden's presidential inauguration, hoping to align their messaging more closely to the Democrat's policies.

[Townhall](#) carries an op-ed that quotes Rich Nolan and argues that the plans of the new White House administration cannot succeed without an increase in U.S. mining.

[E&E Energywire](#) reports the upcoming presidential inauguration of Joe Biden has opened the floodgates this week on proposals for achieving the clean energy future he has promised, and quotes from a recent Count on Coal column.

[Washington Post](#) quotes the NMA in a story on the federal appeals court's adverse decision on the Trump administration's ACE rule.

[RealClearEnergy](#) (DC) ran an op-ed by the NMA's Conor Bernstein in which he argues that the pivot away from baseload power like coal is negatively affecting the reliability of the power grid.

[Towanda Daily Review](#) (PA), [Pottstown Mercury](#) (PA), [Exton Daily Local](#) (PA), [Swarthmore Times Herald](#) (PA), [Lansdale Reporter](#) (PA) [Delaware County Daily Times](#) (PA), [Phoenix Reporter and Item](#) (PA), [Mainline Times](#) (PA), [Montgomery News](#) (PA), [Alaska Journal of Commerce](#) (AK) and [Reno Gazette Journal](#) (NV) all ran an op-ed by Matthew Kandrach, president of Consumer Action for a Strong Economy, in which he argues that a priority must be placed on providing affordable energy, not in transitioning away from a balanced grid.

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## Mining and Energy News

The Silver Institute's recent silver [market trends report](#) estimates that global auto sector silver consumption will reach nearly 90 million ounces by 2025.

[S&P Global reported](#) that to ensure that the critical minerals needed to further develop renewable energy technologies are available, lawmakers should be willing to accommodate both renewable and mining interests, according to the leading Republican on the U.S. House Natural Resources Committee.

[Mining.com reported](#) that global supplies of lithium used to make electric vehicle batteries may fall short of projections for demand to more than triple by 2025 if prices do not rebound.

S&P Global reported on the Energy Information Administration's (EIA) January [Short-term Energy Outlook](#) analysis expecting coal production to increase 15.6% in 2021, slightly lower than last month's outlook.

Argus Media (subscription, 1/11/21) reported that Electric Reliability Council of Texas coal generation increased 20% in December, the first year-over-year increase since March.

[Argus reported](#) that "US coking coal prices continued to edge up, with buyers increasingly conscious that ongoing supply tensions that have carried over to the high-volatile coal segment since December may not ease in the near term."

[E&E News](#) and [Associated Press](#) reported on a Mine Safety & Health Administration [release](#) showing that coal fatalities were at a historic low of five last year.

Argus Media (1/14/21, subscription) reported that "Key northern hemisphere energy consumers have ramped up their coal consumption in recent weeks amid freezing weather and an LNG supply crunch."

[Barron's reported](#) on why EIA thinks coal is experiencing a resurgence in the next few years.

[Coal Zoom](#) reported on opinion survey research conducted by law firm White & Case on concerns facing the global mining industry in 2021. The survey [report](#) indicates that ESG tops the list as the biggest risk.

[S&P Global reported](#) on how China-Australia's trade relations are impacting met coal markets.

EIA's January 19 [Today in Energy](#) release reports on how EIA's Short-term Outlook sees higher natural gas prices resulting in higher coal, solar and wind generation this year.



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