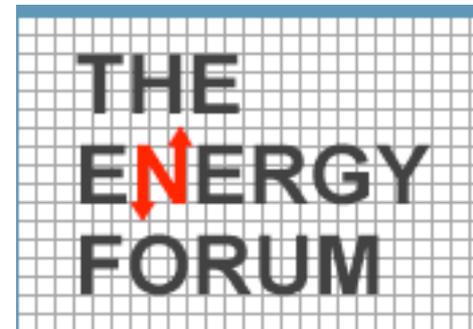




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Alexander Holtan, Counsel  
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NYC FEB 6 2017

## *Trumponomics: The Emerging New Regulatory Environment and Its Impact on the Energy and Financial Sectors*

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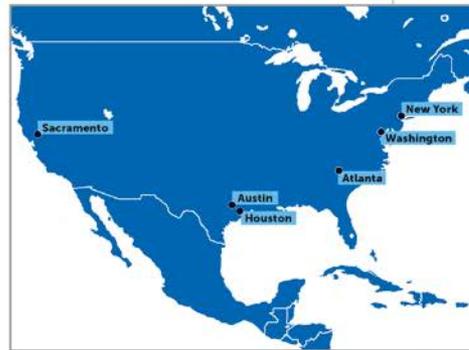
# GLOBAL LAW FIRM WITH DEEP ENERGY REACH

2,300 lawyers

61 offices in 29 countries

Network of more than 200 related law firms

Representing 71 of Fortune 100 and 119 of Fortune 200

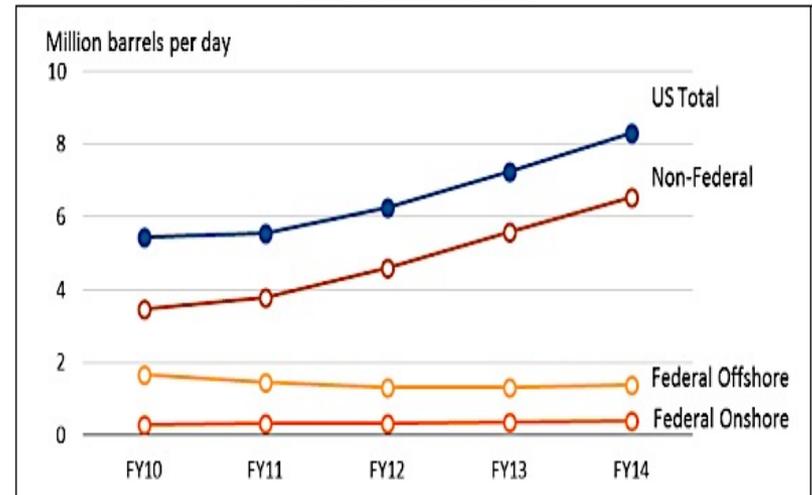


# Trump Pro Fossil Fuel Position Will Not Usher Major Redirection - Reach of U.S. Federal Policy Over Oil and Gas Is Limited

- **Global Price:** Driving factor, largely unaffected by federal policy
- **Production:** Citizens free to develop oil and gas on private lands
- **Federal Lands:** Small fraction of total; spurring more will take time and be at margin
- **Exports:** U.S. laws already allow free exports of all oil and gas
- **Environmental:** Impact of leasing of rules will be at the margin

**Figure 1. U.S. Crude Oil Production:  
Federal and Non-Federal Areas, FY2010-2014**

Million barrels per day (Mb/d)

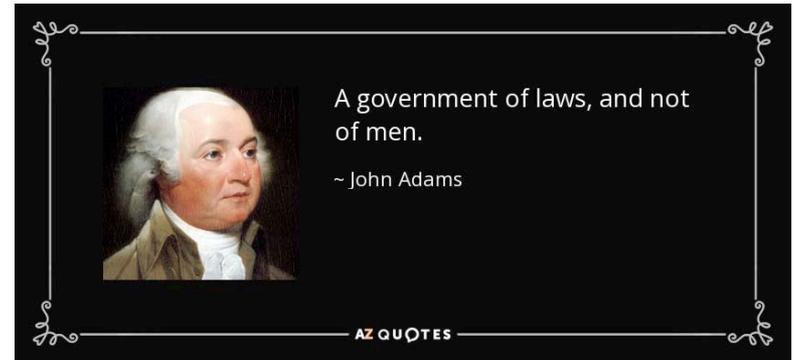


Source: Federal data obtained from ONRR Statistics, <http://www.onrr.gov> (using sales year data). Non-federal from EIA. Figure created by CRS.

**Trump's pro fossil fuel also will not portend key redirection in growth of renewable energy or alter social acceptance of climate change**

# Current Energy and Climate Rules Are Law and Can Be Changed Only Through Legal Processes

- U.S. Government is institution that outlives elected officials
- Agency rules are law, and can only be changed through rigorous rulemaking
  - Example: Clean Air Act (CAA) and SCOTUS ruling in *Mass v. EPA* that the EPA is obligated under CAA to regulate carbon emissions
- But the President has expansive power to impact foreign policy and trade



# Do Not Expect Major Energy or Climate Legislation or the Significant Unraveling of Major Federal Agency Rules

- **First 100 days:** Energy not on the agenda
- **Senate:** Thin R majority (52-48) and filibuster override (60-40) disfavor any controversial legislation
- **Budget Reconciliation:** Energy not targeted for this legislative process (only >50 required); process subject to limitations
- **CRA:** Congress can nullify by simple majority any Obama rule finalized within last 60 legislative days (limited rules affected)
- **Final Rules:** Rulemaking to repeal or modify final agency difficult to deploy



Trump's impact on oil and gas greatest through actions and permits reserved by law to the Executive Branch

# With the U.S. Government Taking a Back Seat, States Will Become More Proactive Regulators and Climate Advocates

## State Oil and Gas Regulations

**Oil and Gas Regulation:  
A Guide for Local Governments**

Photo courtesy of Brent Ray, Craig Daily Press

COLORADO DEPARTMENT OF LOCAL AFFAIRS

**Pennsylvania Changing  
Marcellus Shale Gas Well Regulati**

www.csem.com

**STATE OIL & GAS**  
regulations designed to protect

**WATER RESOURCES**

**SOGRE**  
State Oil and Gas Regulator

**WHO REGULATES FRACKING?**  
A Survey Of The Agencies Responsible for Well Stimulation in California

**DOGGR:** The Division of Oil, Gas & Geothermal Resources  
DOGGR oversees the drilling, operation, maintenance, plugging and abandonment of oil, natural gas and geothermal wells. Since 2011, DOGGR is tracking regulatory actions on well integrity and on the safety of the wellbore. Challenges associated with the use of hydraulic fracturing of water well have also been identified.

Passed in 2014, SB 4 directs DOGGR to work with the following agencies to regulate fracking:

- California Air Resources Board** is developing guidelines in accordance with SB4 to maintain air quality and protect public health from exposure to air contaminants from the drilling process.
- California Water Resources Control Board** will develop groundwater monitoring criteria that will include water quality and discharge restrictions, as a result from drilling practices.
- California Dept. on Resources, Recycling and Recovery** oversees and manages flowback fluids, disposal runoff and wastewater treatment from drilling activities.
- California Department of Toxic Substances Control** regulates the generation, handling and treatment of hazardous fluids brought up through the drilling process are regulated under the DTSC.

## State Climate Change Programs

**California's  
Low Carbon Fuel Standard  
is working**

**\$1,600,000,000**  
in avoided public health impacts...and growing

- CO<sub>2</sub> POLLUTION:** 16.6 million tons of carbon pollution avoided
- PETROLEUM:** 6.6 billion gallons avoided
- CLEAN TREES:** 36% increase in use
- MARKET VALUE:** 1650 million invested in clean fuel

**Most states have renewable portfolio standards and goals**

Legend:  
Blue: Has renewable portfolio standards  
Yellow: No renewable portfolio goals

**Quarterly RGGI Emissions for Renewable Energy**  
(as of July 2015)

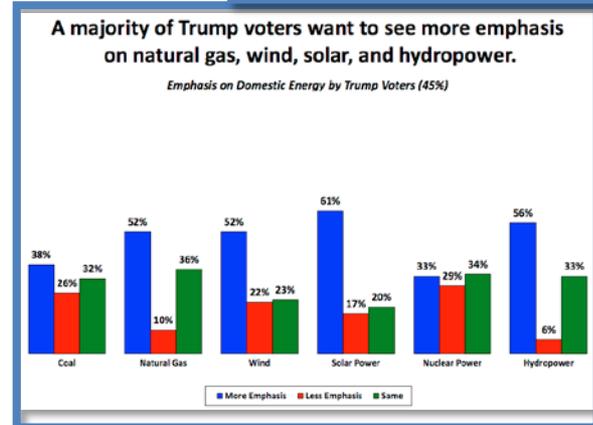
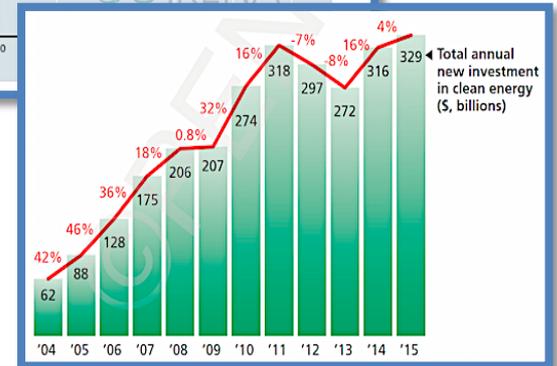
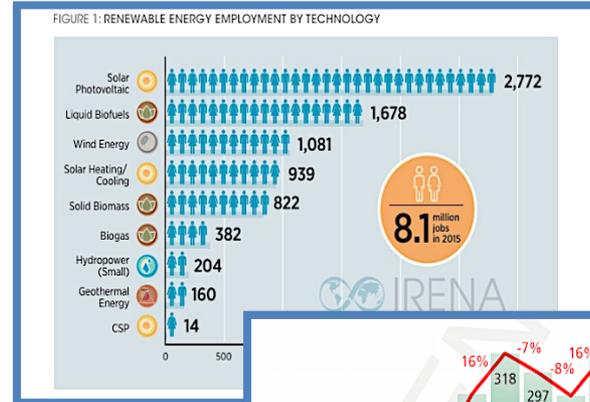
Acadia Center analysis of data from EPA

2015 emissions on trend for 86.1 million tons, assuming similar emissions in Q4 2015 as Q4 2014.

**The Energy to Lead**

**2015 New York State Energy Plan**

# Impact on Climate Change: Trump Will Marginalize Clean Power Plan (CPP), Slow Walk the COP21 "Paris" Agreement, but Investments in Renewables Likely to Maintain Path



# Trump's Greatest Impact on Oil and Gas: Regulations Avoided if Hillary Clinton Were Elected President



## CLINTON ON THE ISSUES:

### ENERGY

- Has stated goal of generating half of US electricity from renewable resources by end of first term
- Wants to launch \$60 billion Clean Energy Challenge to cut pollution and expand clean energy technology
- Proposed cutting oil-and-gas subsidies
- Supports fracking, but wants to create standards and safeguards to make it safer and less destructive
- Opposes Keystone XL pipeline
- Proposed \$30 billion initiative to invest in "economic diversification" of former coal-towns

BUSINESS INSIDER

## CLINTON ON THE ISSUES:

### CLIMATE CHANGE AND THE ENVIRONMENT

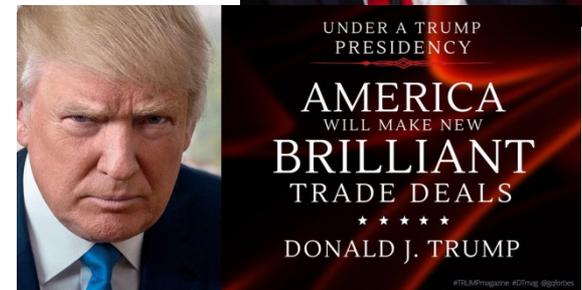
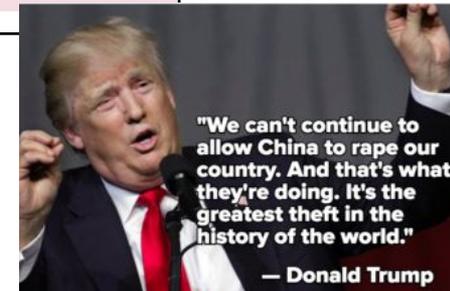
- Calls climate change an "urgent threat"
- Wants to uphold Paris Agreement to reverse the effects of global warming
- Wants to establish a Western Water Partnership to coordinate water use among agencies and states
- Clinton has called for efforts to reverse or slow the decline of at-risk wildlife species resources

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# Trump Views Trade as “War” and Has Broad but Circumscribed Powers to Prosecute it

## Some of Trump’s Powers

- **International Treaties and Agreements:** Power to scrap if unconfirmed – TPP – or to terminate or renegotiate under their terms – NAFTA
- **Higher Import Duties on Country:** Only through Congress, unless law authorizes President for specified reasons (Origination Clause in U.S. Constitution)
- **WTO:** Mandates Most Favored Nation (MFN) treatment and Tariff Bindings require adherence to agreed tariffs (GATT Art. II); risk of retaliation
- **Unfair Trade Practices by Country:** Law allows wide range of remedies including higher duties (Tariff Act of 1974, Sec. 301)
  - Dispute resolution through WTO
- **Balance of Payments:** Empowers President to large and serious issue by imposing 15% tariff (or quotas) for 150 days (Trade Act, Sec. 122)
- **National Security:** President has power to impose tariffs where there is a threat to industry critical for defense: where viability of important industry is endangered; or in the event of a national emergency (Trade Expansion Act, Sec. 232(b); IEEPA)



# Corporate Tax Reform: Likely to Have Greatest Financial Impact on Oil and Gas Industry

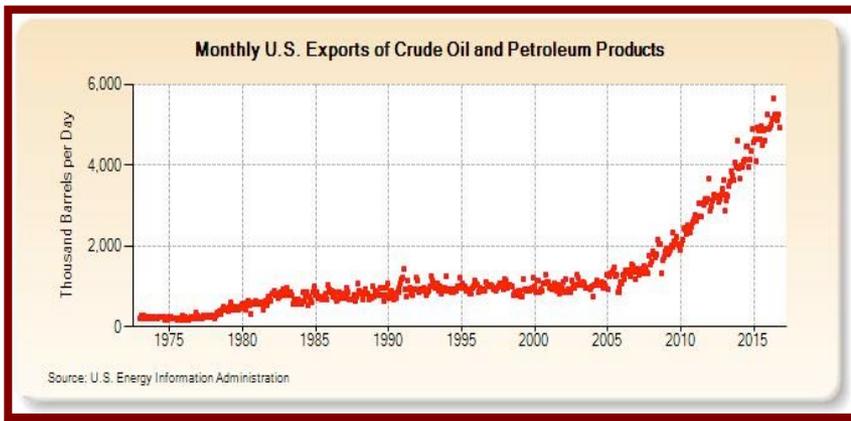
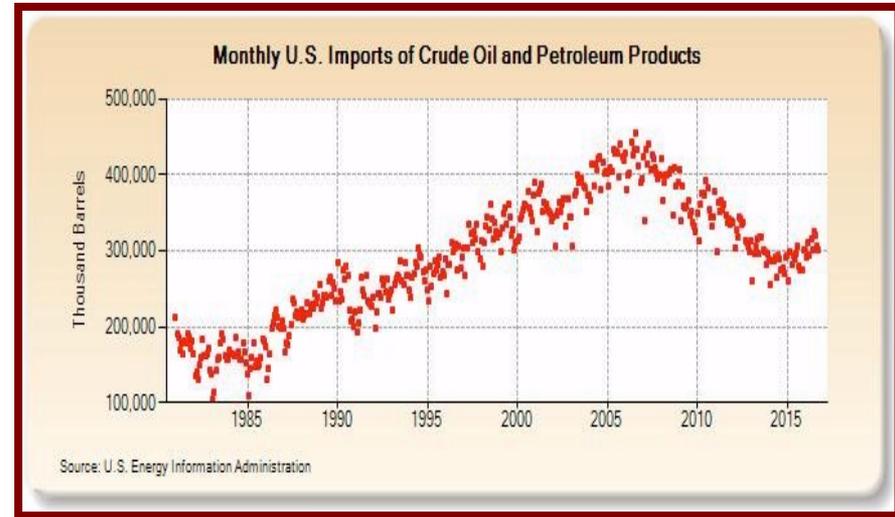
## Some Key Elements of Republican Plan

- **Rates:** Reduce marginal from 35% to 20% [15%]
- **Capital Investments:** Expense on current basis
- **Interest Expense:** Disallow deduction except against interest income
- **Credits and Deductions:** Disallow or reduce
- **AMT:** Eliminate
- **Territorial System:** Exempt from tax subsidiary income abroad
- **Repatriation:** Tax deferred income at 8.75%
- **Border Adjustability:** Discussed next



# The Border Adjustability Tax (BAT) Is Part of House Plan and If Adopted Would Have a Radical Impact on all Business

- Imports taxed at the marginal corporate rate
  - e.g. 20% -- on a cash flow basis
- Tax imposed by disallowing a deduction for any of the costs of the imported product
- Point of taxation moved from production to consumption
- Theory: Equalize imports with domestic products



- Exports are exempt from BAT or income tax
- Export revenues not includable as income
- All wages can be deducted against taxable revenues
- Theory: Make U.S. exports competitive with products from low tax jurisdictions

# Prospects for the BAT Depend Largely on WH View; Conflation Between Tax Objectives and Penalizing Imports

Border tax is only one option for having Mexico pay for the Wall



"Anytime I hear border adjustment, I don't like it . . . A bad deal" 1-17-17

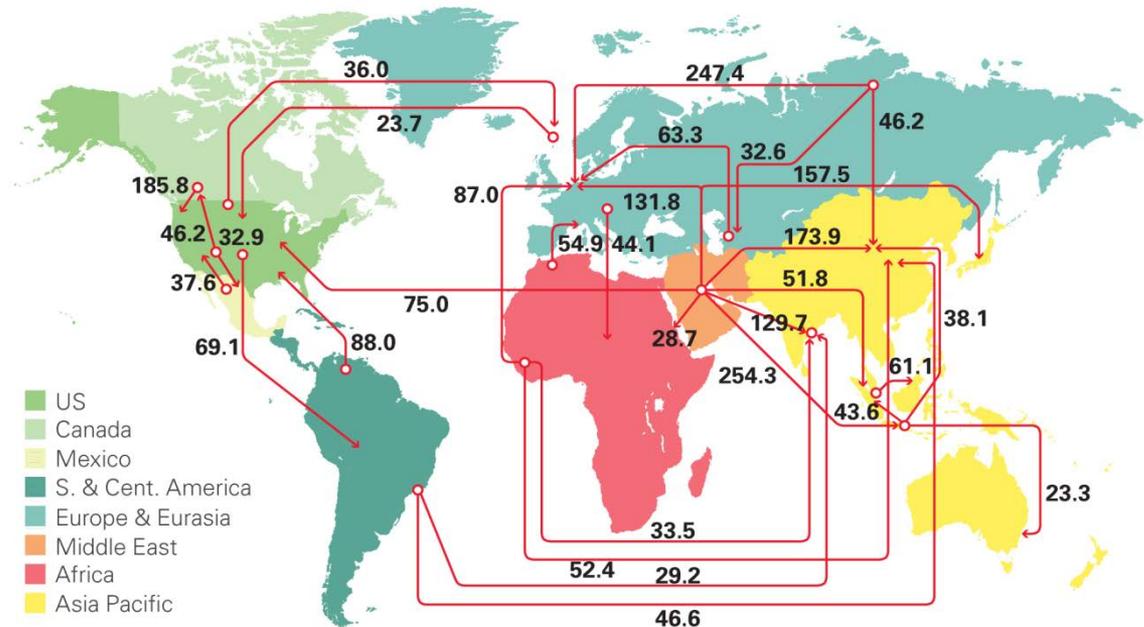
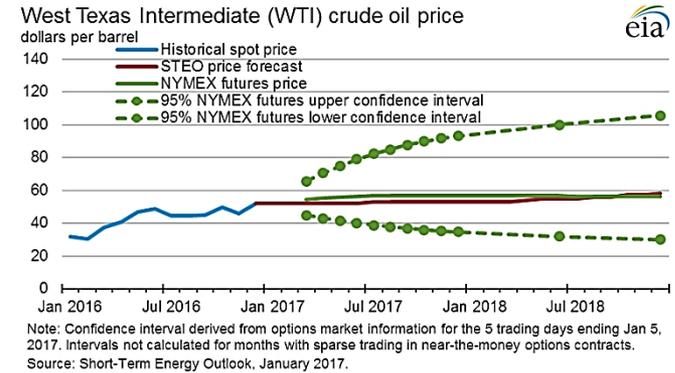


"This BAT needs more nursing"

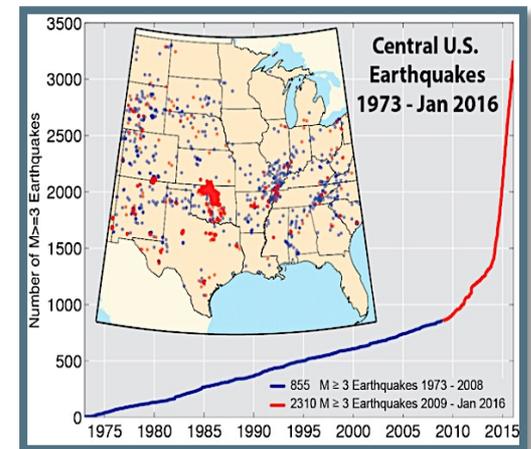
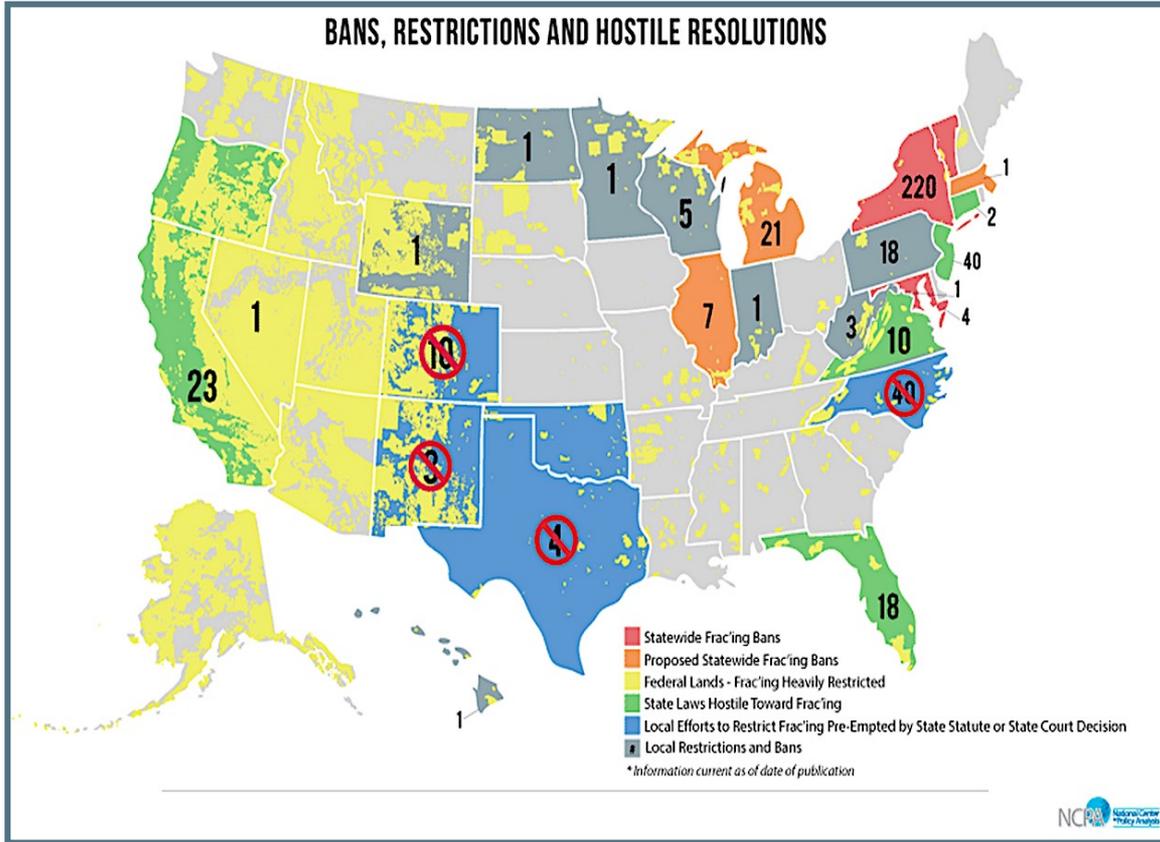


# Potential Effects of BAT on Oil and Gas on . . .

- U.S. and global oil prices and flow
- U.S. producers and supply
- U.S. consumers
- Upstream investment
- U.S. oil imports
- U.S. oil exports
- U.S. refiners

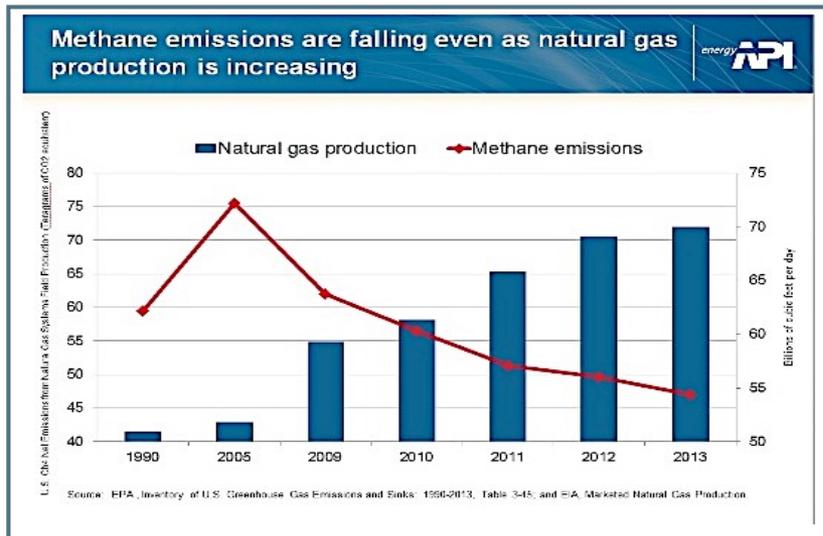
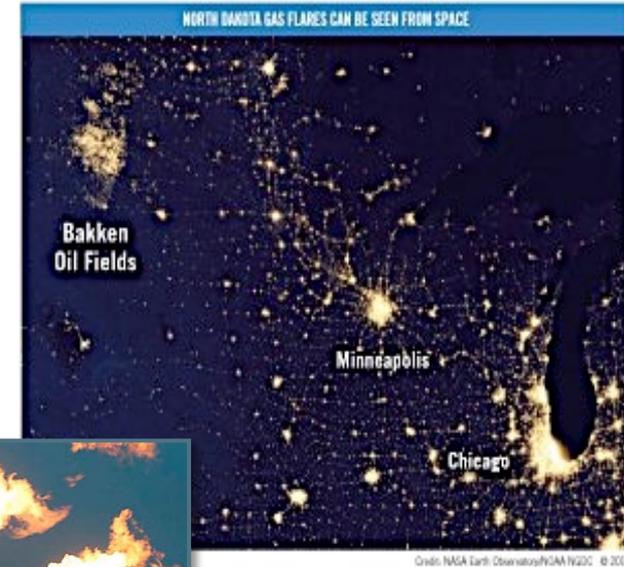


# Restrictions on and Regulations of Hydraulic Fracturing Will Intensify at State and Local Level



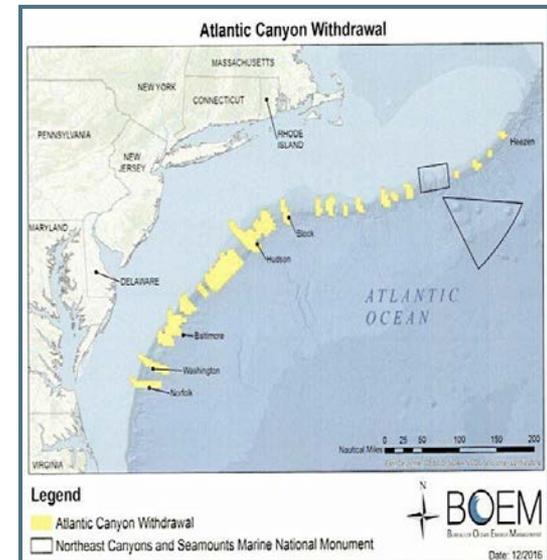
# Trump's Election Will Curtail Regulation of Methane Emissions – Flaring – from Oil and Gas Wells

- EPA's proposal to regulate flaring from existing wells will die on the vine
- Interior's final fracking regulation on federal lands is under stress – but could survive
- EPA regulation regarding methane emissions from new and modified wells likely to remain in force

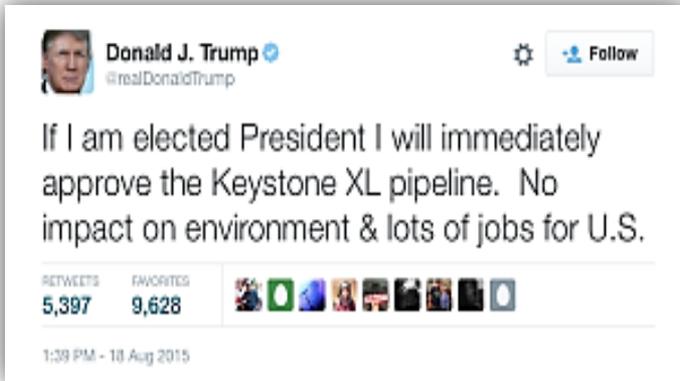


# Offshore Development: Reversal of Obama's Decision to Preclude Drilling Permanently in Parts of Arctic and Atlantic Will Require Regulatory Process and Face Legal Challenges

- OCSLA says the President is empowered to “withdraw from disposition any of the unleased lands” of the OCS
- Legal question is whether withdrawal can be permanent (past presidents using power for a specified period)
- Analogous: Designations of national monuments under Antiquities Act cannot be reversed
- An act to Congress can remove designation
- In all events, compliance required with regulatory requirements regarding new five-year leasing plan

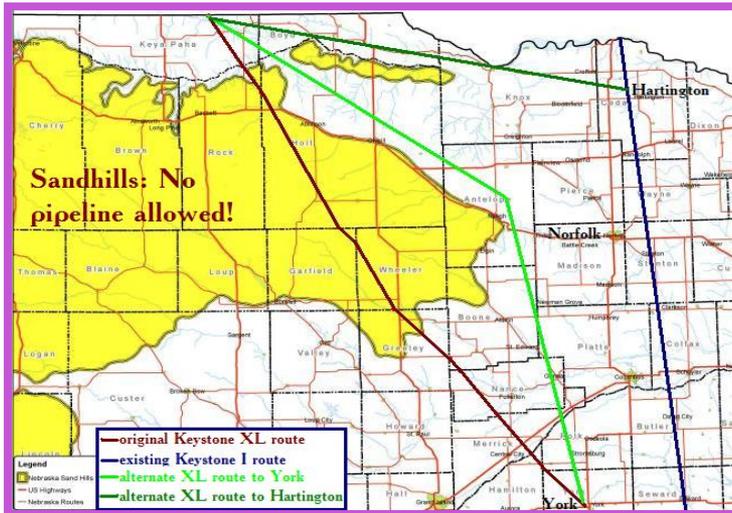


# Trump to Issue Cross-Border Permits and Federal Easements for Oil Pipelines; Battleground Will Migrate to the States

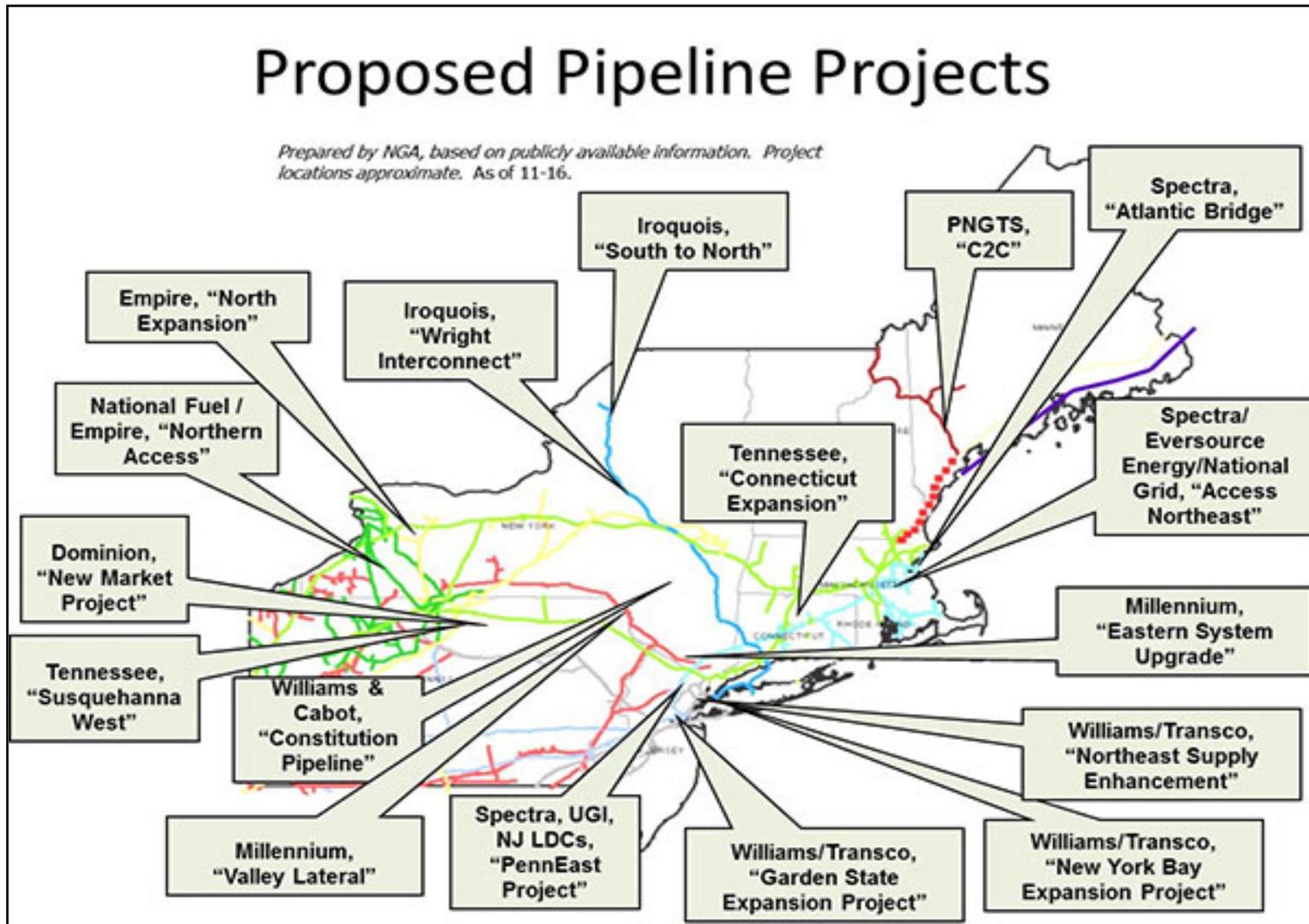


Trump's approval of Keystone does not include a grant of eminent domain over private lands in Nebraska

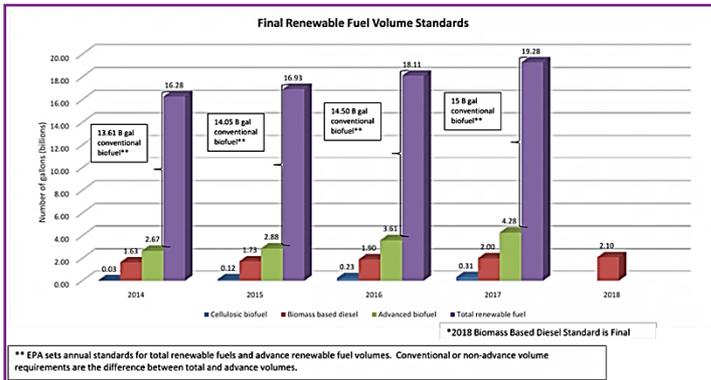
Despite Trump's approval for Dakota Access, opponents are planning site protest and litigation of tribe treaty and other rights



# Trump's Effects on Gas Pipeline Infrastructure in NE?



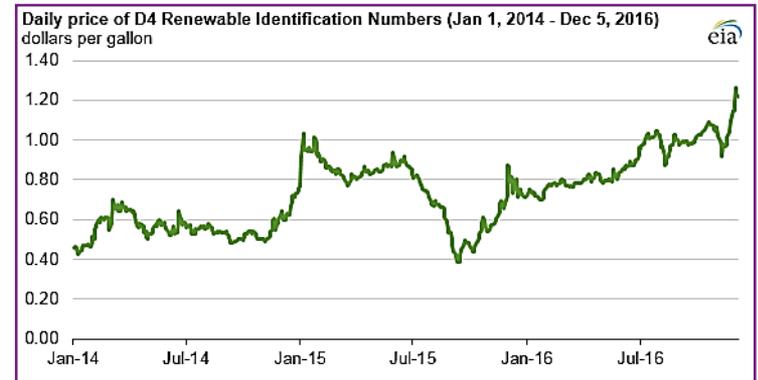
# The Trump Administration Is Likely to Change RFS or Point of Obligation and Hence Affect Accompanying RINs Market



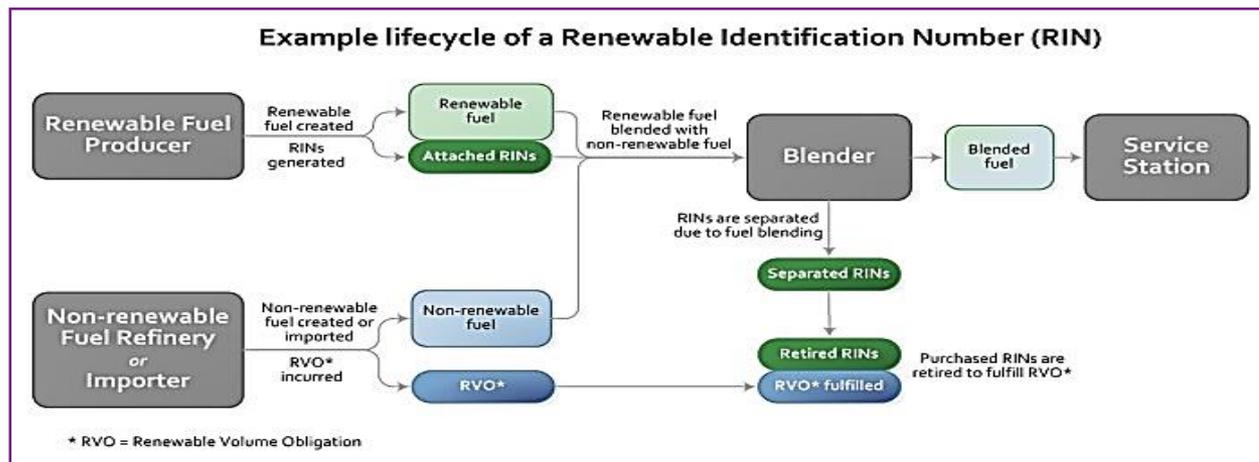
**RFS Volumes Disputed Each Year**



**Scott Pruitt, Incoming EPA Administrator**

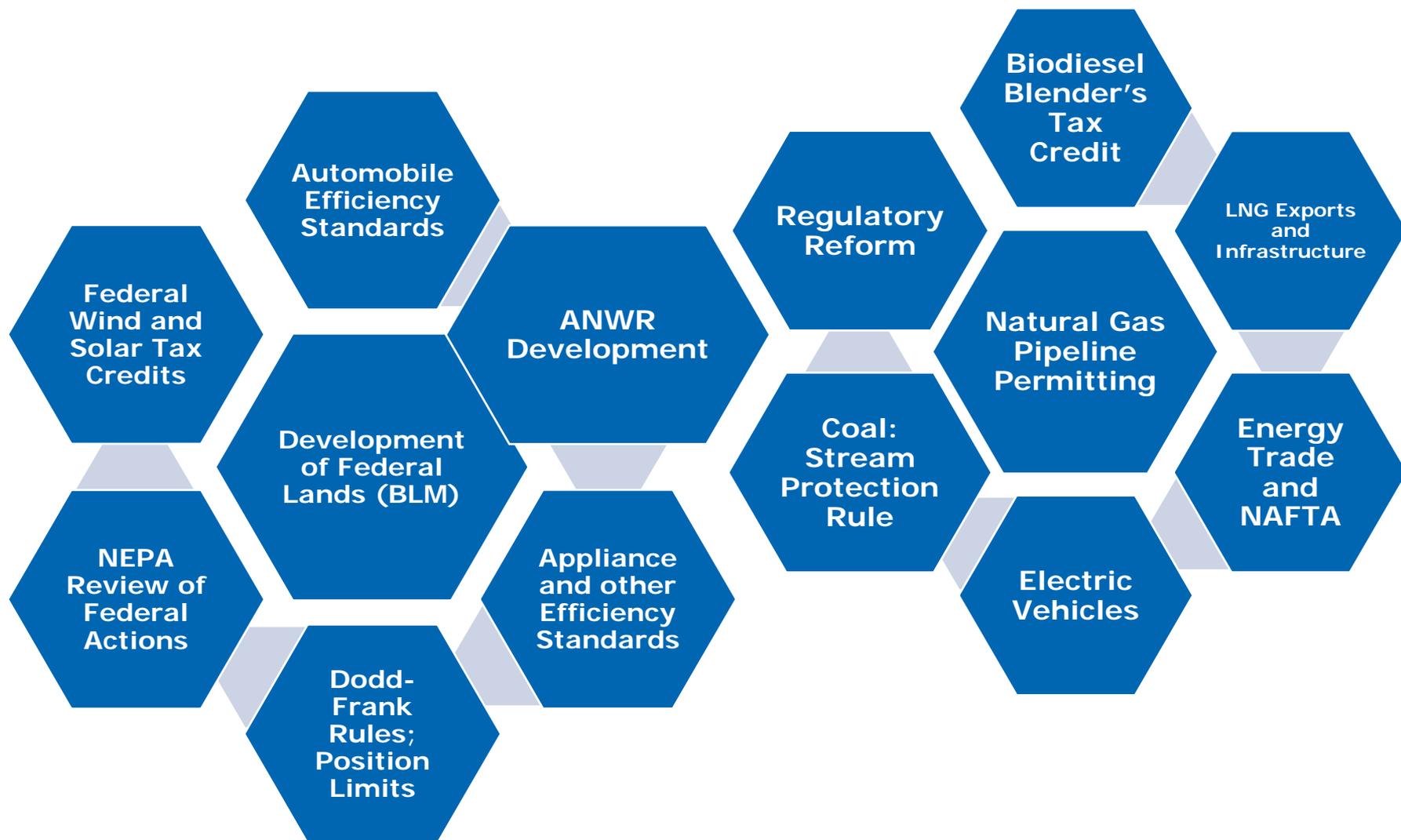


**RINs Prices Historically Volatile**



**Refiners Petitioned EPA to Change Point of Obligation to Blenders**

# Additional Areas for Discussion of Impact of Trump Presidency and Republican Congress on Domestic Energy and Climate



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