

President Trump Reverses Federal Approach on Climate Change

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On March 28, President Trump signed a wide-ranging executive order to reverse, rescind, revise and request further review of a multitude of climate change initiatives implemented by the prior administration.

The “Presidential Executive Order on Promoting Energy Independence and Economic Growth” announces the new administration’s policy as:

[I]t is the policy of the United States that executive departments and agencies (agencies) immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

The order:

calls for every agency to immediately review all agency actions that “potentially burden the development or use of domestically produced energy resources[.]” The order defines “burden” as meaning “to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.” The final report regarding each agency’s recommendations to reduce or eliminate “aspects of agency actions that burden domestic energy production” should be completed no later than July 26, 2017.

rescinds seven different orders, memoranda, reports and guidance related to energy and climate-related presidential and regulatory actions. Orders to consider climate change impacts on national security issues and in NEPA reviews, to reduce and carbon emissions

from power plants and methane emissions, and to mitigate impacts of development on natural resources, are among the revoked actions. The Obama Climate Action Plan and a supporting report on reducing methane emissions were also rescinded.

calls for the Environmental Protection Agency to immediately review the “Clean Power Plan,” limiting emissions from existing power plants, and related rules and agency actions. This component instructs the EPA Administrator to review the final rules and associated guidance “for consistency with the policy set forth in ...this order and, if appropriate ... as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.”

It further instructs the EPA Administrator to “promptly notify the Attorney General of any actions taken” regarding Clean Power Plan and its related rules so that the Attorney General may, “as appropriate,” notify courts presiding over pending litigation related to these rules and potentially seek stays or other relief from the courts pending the completion of EPA’s action related to these rules. On March 28, the Attorney General moved to hold the D.C. Circuit Court of Appeals’ review of the Clean Power Plant litigation in abeyance. (*West Virginia v. EPA*, Case No. 15-1363).

orders changes to executive agencies’ estimates of the social cost of carbon, nitrous oxide, and methane in regulatory impact analyses. These changes include disbanding the Interagency Working Group on Social Costs of Greenhouse Gases and withdrawing six technical documents that are no longer representative of government policy. These technical documents relate to the method for determining the social cost of carbon for a regulatory impact analysis. “Effective immediately,” the order instead instructs that monetization of regulations’ effect on greenhouse gases be “consistent with the guidance contained in OMB Circular A-4 of September 17, 2003 (Regulatory Analysis)[.]”

directs the Secretary of the Interior to lift any moratoriums on new coal leases on federal land, which Secretary Zinke did almost immediately, on March 29, 2017.

directs the EPA Administrator to review and move to rescind, where appropriate, various regulations related to U.S. oil and gas development. This component includes a direction for the EPA Administrator to review various oil and gas development rules, including the June 3, 2016, amendments to the New Source Performance Standards (NSPS) for the Oil and Natural Gas Sector, related to VOC and GHG emissions, and various authorities related to fracking.

The ultimate impact of the March 28 executive order is unclear. Some of the initiatives are codified in final regulations, such as the amendments to the Oil and Gas Sector NSPS. Some are already in litigation, such as the Clean Power Plan. In addition, further litigation on several of these issues has been promised by many interest groups. We will continue to monitor the legal developments, the

impact on business strategies, and the subsequent regulatory follow-through.

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