



TRUMP EXECUTIVE ORDER ON CLIMATE WRONG DIRECTION FOR WILDLIFE, NATURAL RESOURCES

On March 28, 2017, President Trump signed an [Executive Order](#) canceling the U.S. Climate Action Plan and taking steps to undo several significant policies on climate change. The Executive Order contained reversals on the Clean Power Plan, oil and gas industry methane standards, the federal coal leasing moratorium, accounting of the social cost of carbon, the NEPA climate guidance, and disaster and international climate resilience aid.

Previously, on March 15, 2017, the EPA and DOT canceled the next round of fuel economy requirements for model years 2022-2025, which, when combined with earlier requirements, would have cut greenhouse gas emissions by half from tailpipes when compared to 2011. The Trump Administration also announced a plan to reevaluate the regulatory determination underpinning these requirements. With no replacement policies on the horizon, the fuel economy announcement and climate Executive Order set the United States on a dramatically different course of inaction in the face of increasingly dangerous changes to our climate.

The EPA is legally obligated to address climate change. Americans are concerned about climate change and view policies favorably.¹ Climate solutions are achievable and cost-effective,² and ensure U.S. leadership on clean energy innovation. And, they are needed to protect our natural resources, wildlife, human health, and national security,³ plus our standing with other nations who expect us to keep our commitments.⁴ Undoing the policies outlined below ignores the meticulous and careful work done over years to gather input from the public, regulated industry, experts, states, and tribes to strike a balanced and flexible approach to curbing runaway climate pollution.



Loggerhead sea turtle. Photo by SKEEZE/ Pixabay

CONTENT AND LEGAL IMPLICATIONS OF THE EXECUTIVE ORDER

Clean Power Plan

- What the EO does:
 - Drops legal defense of the Clean Power Plan and parallel carbon pollution performance standards for new coal plants. The Attorney General may choose to ask for a stay or seek “appropriate relief” from the courts.
 - Directs the EPA to review and potentially rewrite or rescind (via proposed rulemaking) the following:
 - The Clean Power Plan, and
 - New source performance standards for coal plants.
 - Directs EPA to review the Federal Implementation Plan proposed rule – a guide and backstop to states complying with the CPP – for revision or withdrawal.

➤ Background:

- The Clean Power Plan aims to reduce carbon pollution from existing power plants to 32 percent below 2005 levels by 2030. The CPP is a critical component to ensuring the U.S. reduces its emissions in line with what scientists tell us is needed to avert the worst impacts of climate change to wildlife.
- Power plants emit nearly 1/3 of the greenhouse gases in the U.S.
- "Fossil-fuel-fired power plants emit vast amounts of CO₂ pollution, which poses a monumental threat to Americans' health and welfare by driving long-lasting changes in our climate, leading to an array of severe negative effects that will worsen over time."- EPA court [brief](#)



A coal fired power plant. Flickr photo by gvgoebel

- Additional background: <http://blog.nwf.org/2015/08/4-things-you-need-to-know-about-the-clean-power-plan/>

➤ Legal implications:

- EPA is legally bound under a 2009 Clean Air Act “endangerment finding” to take action to limit carbon emissions, having determined that greenhouse gases endanger public health and welfare.
- On February 9, 2016, the Supreme Court stayed implementation of the Clean Power Plan pending judicial review. The Court’s decision did not address the merits of the rule. The D.C. Circuit Court is expected to rule this spring or summer on the merits of the plan, in response to a lawsuit from states and regulated industry.
- Because the Clean Power Plan is a rule that was properly promulgated under the Clean Air Act, the Administration cannot just cancel the rule. What the EO instead does is ask EPA to stop defending the current rule in court, review it, and propose either rewriting or rescinding it. The court may continue to hear the case concerning the current rule regardless of the Administration's request, but it is probable the court will grant the Administration's request.
- To rewrite or rescind the rule, EPA must again go through notice and comment rulemaking, and present a reasonable response to the 2009 Clean Air Act finding that carbon dioxide endangers health and welfare. A new rule, or a decision to rescind the rule entirely, can then be challenged in court. This process can take some time, perhaps several years.

Methane Regulations

➤ What the EO does:

- Directs the Bureau of Land Management to review and potentially rewrite or rescind (via proposed rulemaking) its rule limiting methane waste from new and existing oil and gas facilities on public and tribal lands.
- Directs EPA to review and potentially rewrite or rescind (via proposed rulemaking) its rule cutting methane pollution from new and modified oil and gas facilities.
- Directs the Department of the Interior to review three additional rules related to oil and gas production.
- Drops legal defense of the above rules. The Attorney General may choose to ask for a stay or seek “appropriate relief” from the courts.



Mule deer. Photo by Micheal O'Leary

➤ Background:

- Methane is the primary component of natural gas. Methane is a potent greenhouse gas, with 80 times the impact on our climate as CO₂ in the short-term. When natural gas is leaked or intentionally released to the air during oil and gas production and transport, methane and toxic air pollution are released along with it.
- The previous Administration adopted a goal of cutting methane emissions from the oil and gas sector by 40 to 45 percent below 2012 levels by 2025. To achieve this goal, EPA and the Bureau of Land Management (BLM) each produced common-sense rules. The BLM rule limits waste of valuable natural gas and methane from oil and gas production on federal and tribal lands.
- **BLM Rule:**
 - Finalized in November 2016, the BLM rule is projected to cut methane emissions up to 35 percent, and could save enough natural gas to be able to power up to about 740,000 households each year.
 - By requiring greater capture of escaping gas on taxpayer-owned public and tribal lands, the BLM rule generates more royalty revenues that can be used to better protect special places and support communities and infrastructure.
- **EPA Rule:**
 - In May 2016, the EPA finalized a rule to reduce methane and volatile organic compound (VOC) emissions from new and modified oil and gas sources, including regular methane leak inspection and repair requirements.
 - EPA estimated that its rule will result in net climate benefits of \$170 million in 2025, by reducing 462,000 metric tons of methane (an amount equivalent to 11 million metric tons of carbon dioxide). It also will reduce 210,000 tons of VOCs and 3,900 tons of air toxics by 2025.
 - On March 2, the EPA canceled plans to collect data that was to provide a foundation for regulating existing oil and gas sources of methane pollution.
- Additional background: http://www.nwf.org/~media/PDFs/Global-Warming/NWF-CATF_Updated_Fact-Sheet_Tribal-Lands_03062017.ashx

- Legal implications:
 - As with the Clean Power Plan, final regulations can only be replaced or rescinded through formal notice and comment rulemaking, a lengthy process. Any new rule, or a decision to rescind a rule entirely, can be challenged in court.

Federal Coal Leasing

- What the EO does:
 - Directs the Bureau of Land Management to lift a moratorium on federal coal leasing.
- Background:
 - In response to an extensive public input process, in 2016, the Department of Interior issued a moratorium on new coal leases on federal land while a much needed review of the federal coal leasing program occurred. The federal coal leasing program has not been updated in over 30 years. It is in long overdue need of reform to account for modern conditions and considerations.
 - The moratorium will ensure that new federal leases do not occur until reforms take place. The moratorium will not impact current mining or jobs, as the industry has approximately 20 years-worth of mining activity locked in under existing leases.
 - With coal use declining, outdated royalty structures and coal companies in various stages of bankruptcy, reform is needed to ensure that the public is getting a fair return for the extraction of a public resource, that the natural resources, people and wildlife are adequately protected, that the full costs (including carbon pollution impacts) of coal mining are accounted for, and that required reclamation of the land and water affected by mining occurs.
 - Additional background: <http://www.nwf.org/News-and-Magazines/Media-Center/News-by-Topic/Global-Warming/2016/01-15-16-Coal-Leasing-Reform-a-Sensible-Step-to-Protect-Wildlife-Taxpayers.aspx>
- Legal implications:
 - Lifting the moratorium does not require a process and can take effect immediately, allowing new coal leases to be approved before a comprehensive – and long overdue – review of the federal coal leasing program takes place.
 - Current leases provide about 20 years of mining activity, so new leases are not needed to support current jobs or mining.
 - The process to reform the coal leasing program is not addressed by the Executive Order. The current program is very out-of-date, doesn't account for the full costs of coal leasing to wildlife, communities and the environment, and is unfair to tax payers.

Social Cost of Carbon

- What the EO does:
 - Disbands the Interagency Working Group (IWG) on the Social Cost of Greenhouse Gases.
 - Withdraws six technical documents produced by the IWG, the work of which will no longer represent Government policy.
 - Reverts to 2003 policy on conducting regulatory analysis.
- Background:
 - The social cost of carbon is used in rulemakings and environmental analyses by various federal agencies to determine the costs of carbon pollution emissions that result from agency actions.

- The SCC is intended to be, according to the EPA, a “comprehensive estimate of climate change damages and includes changes in net agricultural productivity, human health, property damages from increased flood risk, and changes in energy system costs, such as reduced costs for heating and increased costs for air conditioning.” Due to modeling and data limitations, it is likely a conservative estimate of the actual costs of carbon emissions to society.
 - The SCC has been used by agencies since 2008. It provides a more transparent and accurate accounting of the real costs of federal projects and agency actions, and allows for decisions that are better informed about the true costs to wildlife, people and natural resources.
 - Additional background: <http://blog.nwf.org/2013/06/an-updated-social-cost-of-carbon-shows-that-the-economy-benefits-from-cutting-carbon-pollution/>
- Legal implications:
- Unlike the Clean Power Plan, the social cost of carbon policy was not adopted pursuant to rulemaking and the Administration has much greater latitude to direct agencies to stop using it. However, there is ample case law that the impacts of climate change must be accounted for in making decisions under aspects of several environmental laws. Agencies still must account for carbon pollution impacts in many circumstances and must do so in a reasonable manner that will hold up in court.

NEPA Climate Guidance

- What the EO does:
- Directs the Council on Environmental Quality to rescind the NEPA climate guidance.
- Background:
- The guidance tells agencies to quantify both the direct and indirect (such as the burning of coal or oil) carbon pollution emissions impacts of federal actions. It also asks federal agencies to evaluate how climate change impacts will affect or be affected by projects. For example, how precipitation changes or sea level rise will create environmental impacts over time.
 - It ensures that a meaningful look at the climate effects of projects will occur for all major federal projects that may contribute to climate change. The agencies are asked to evaluate the climate impacts of all various alternatives being considered, including no action, and evaluate ways to mitigate climate emissions.
 - The guidance encourages agencies to consider land use based policies such as “carbon sequestration (e.g., forest, agricultural soils, and coastal habitat restoration), [and] sustainable land management practices” as mitigation for emissions.
 - Additional background: <http://blog.nwf.org/2016/08/accounting-for-climate-change/>
- Legal implications:
- The guidance document is not a rule and can be undone by executive order. However, case law makes clear that agencies must consider climate change impacts under the National Environmental Policy Act. The guidance provided strong and consistent direction for agencies to consider these impacts when evaluating federal actions. Agencies will now have less guidance regarding how they fulfill this obligation.

Disaster Planning and Climate Resilience

- What the EO does:

- Revokes an executive order preparing the U.S. for the impacts of climate change (EO 13653), and presidential memoranda mitigating the impacts on natural resources from development (dated 11/3/15), and climate change and national security (dated 9/21/16).

➤ Background:

- Safeguarding wildlife, natural resources, and human communities in the face of climate change presents many challenges, and requires careful planning that takes account of short- and long-term changes. Preparing for and coping with future climate impacts also requires coordination across agencies, and guidance on consistent ways to address challenges and share information.



A Fire Island, N.Y., home destroyed by Hurricane Sandy. Photo via Flickr North Atlantic Division

- EO 13653 promoted partnerships and information sharing throughout the federal government, risk-informed decision-making, and preparedness planning as it relates to climate change.
- The November 2015 memorandum set policy of several agencies to avoid or minimize harmful effects to land, water, wildlife, and other natural resources caused by land- or water-disturbing activities, and to ensure harmful effects are addressed.
- The September 2016 memorandum directed federal agencies to consider climate change-related impacts in national security doctrine, policies, and plans.
- Additional background: <http://www.nwf.org/What-We-Do/Energy-and-Climate/Climate-Smart-Conservation.aspx>

➤ Legal implications:

- Executive orders and memoranda are not rules and can be undone by another executive order. However, agencies, including the Department of Defense, will now have less clarity and guidance on how to fulfill their missions to protect the public and natural resources from climate change. This is in contrast to the Defense Secretary's views that climate change and fossil fuel dependence pose a security risk to the United States.⁵

Other

- The Executive Order also orders a review of all agency actions that could be an impediment to domestic fossil fuel and nuclear energy production.

¹ See, for example: <https://www.nytimes.com/interactive/2017/03/21/climate/how-americans-think-about-climate-change-in-six-maps.html?smid=fb-share&r=1> ; http://www.gallup.com/poll/207119/half-concerned-global-warming-believers.aspx?g_source=Politics&g_medium=newsfeed&g_campaign=tiles ; and <http://www.lung.org/about-us/media/press-releases/americans-strongly-favor-methane-limits.html>.

² <http://www.synapse-energy.com/sites/default/files/clean-power-plan-green-affordable.pdf>

³ <https://www.defense.gov/News/Article/Article/612710>

⁴ https://www.washingtonpost.com/news/energy-environment/wp/2017/03/28/trumps-climate-rollback-raises-deep-questions-about-our-promises-to-the-rest-of-the-world/?utm_term=.d71146d9e7d9

⁵ <https://www.propublica.org/article/trumps-defense-secretary-cites-climate-change-national-security-challenge>