

President Trump's Climate Change Executive Order: Legal Impacts and Business Implications

April 5, 2017 | Client Update | 2-minute read

On March 28, 2017, President Trump signed a sweeping executive order aimed at rolling back signature portions of the Obama administration's climate change agenda. Framed as a series of measures to bolster American energy independence, economic growth and job creation, the executive order takes steps to undo nearly two dozen Obama-era regulations, executive actions, policies and guidance documents. Some of the most prominent regulations affected include those governing greenhouse gas emissions from the power sector, notably the Clean Power Plan, as well as methane and other air emissions from oil and natural gas operations, including hydraulic fracturing.

The process of rescinding or revising regulations is lengthy, complex, and often the subject of vigorous legal challenges. The legal backdrop and factual record upon which Obama-era climate change regulations are based are likely to further complicate the Trump administration's ability to rescind or revise them because of the standard of review used by courts in reviewing challenged changes to regulations. In addition, the limited resources the Trump administration has promised to allocate to the U.S. Environmental Protection Agency ("EPA") and other executive agencies under its current budget proposals, as well as delays in filling agency staff positions necessary to drive the new rulemaking process forward, while intended to reduce Obama-era regulation, is ironically likely to slow the process further. The end result of this process is difficult to predict, but for most of the regulations targeted by the executive order, revising them to be more industry-friendly will likely be easier for EPA to justify and defend than rescinding them outright.

However the rulemaking process plays out, the status quo is likely to continue for quite some time with respect to regulations targeted by the executive order. As a practical matter, this means that businesses will most likely have to continue to comply in the short term with regulations targeted by the executive order that are currently in effect. Those targeted regulations that are stayed or otherwise on hold as a result of ongoing legal challenges – such as the Clean Power Plan – are likely to remain so, absent further litigation developments. In contrast, the impact of the executive order on Obama administration executive actions, policies and guidance documents will be immediate.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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