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Environmental Protection in the Trump Era

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How Executive Actions Can Shape Environmental Law

All presidential administrations employ a variety of executive orders and other executive actions, which serve important organizational, symbolic, and policy purposes. However, **this presidential power is limited:**

- it consists of directives to the executive branch;
- it must be in accordance with the law; and
- its exercise is subject to modification or reversal by a successor president.

Several Obama Administration presidential actions on environment and climate change have been revoked, and the Trump Administration has used multiple executive orders to further its own deregulatory agenda.



Process.

Presidents issue executive orders, proclamations, memoranda, and other instruments ranging widely in their purpose and effect, from internal management directives to sweeping changes in federal policy to exercises of military command. In the environmental and natural resources field, these actions might be implemented in several ways: by the White House itself; through the Council on Environmental Quality (CEQ), EPA, or the Department of the Interior; or via interagency coordination.

Except in the unusual case where Congress has authorized the president to make decisions having legal effect, **executive orders are not lawmaking in the usual sense**. Rather, they are directives to be followed within the executive branch, by virtue of the president's inherent power to appoint or remove agency heads and other officials. But to bind government agencies and withstand judicial review, **executive orders must be consistent with and operate within the limits of applicable law**.

An executive order can be revoked or modified:

- by the president who issued it or a successor president;
- by an act of Congress, if the president was acting on authority granted by Congress; or
- by a court ruling that the order was illegal or unconstitutional.



Discussion.

Especially in times of political gridlock, the idea of making sweeping changes “with the stroke of a pen” can be appealing. **presidents do advance some substantive policy goals through their**

Areas to Watch

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994) ([see Chapter 13](#));
- Executive Order 13547, Stewardship of the Ocean, Our Coasts, and the Great Lakes (2010);
- Executive Order 13693, Planning for Federal Sustainability in the Next Decade (2015).

orders affecting agencies’ structure, statutory interpretations, enforcement priorities, or contracting and procurement. But it is equally **easy for a successor administration to alter or reverse these policies**, and such changes routinely occur with a change of parties.

A new administration typically also takes executive action to temporarily freeze still-pending agency rules, but longer or indefinite delays may be subject to challenge in court.¹ **Executive orders cannot unilaterally revoke an agency rule that is already on the books**, but they may direct the agency to begin the process of reviewing the rule and revising or withdrawing it through a subsequent rulemaking ([see Chapter 8](#)).



Opportunities for Public Engagement.

Minimal. Executive orders are developed by White House staff and approved by the president. Congress rarely intervenes, and any resulting legislation would be subject to a presidential veto. The legality of some executive orders may be challenged in court; but the revocation of existing orders is unlikely to provide a basis for a lawsuit, nor is it clear who would have standing to sue.



Trump Administration Actions Taken.

- Presidential Memorandum on “Regulatory Freeze Pending Review” (Jan. 20, 2017);
- Executive Order 13766, Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects, and Presidential Memoranda Regarding Construction of the Keystone and Dakota Access Pipelines (Jan. 24) ([see Chapter 4](#));
- Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs (Jan. 30) ([see Chapter 2](#));
- Executive Order 13777, Enforcing the Regulatory Reform Agenda (Feb. 24) ([see Chapter 2](#));
- Executive Order 13778, Reviewing the “Waters of the United States” Rule (Feb. 28) ([see Chapter 8](#));
- Executive Order 13783, Promoting Energy Independence and Economic Growth (Mar. 28) ([see Chapter 8](#));
- Executive Order 13792, Review of Designations Under the Antiquities Act (Apr. 26) ([see Chapter 5](#));
- Executive Order 13795, Implementing an America-First Offshore Energy Strategy (Apr. 28) ([see Chapter 6](#));
- Executive Order 13805, Establishing a Presidential Advisory Council on Infrastructure (July 19) ([see Chapter 4](#));
- Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure (Aug. 15) ([see Chapter 4](#)).



Obama Administration Actions Overturned.

- Executive Order 13653, Preparing the United States for the Impacts of Climate Change (2013);
- Executive Order 13690, Establishing a Federal Flood Risk Management Standard (2015);

1. E.g., *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 26-28 (D.D.C. 2012).

- Presidential Memorandum on Power Sector Carbon Pollution Standards (2013);
- President’s Climate Action Plan (2013);
- CEQ Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews (2016).

Social Cost of Carbon. As part of Executive Order 13783 on “Promoting Energy Independence and Economic Growth,” the Trump Administration also changed direction on calculating the “social cost of carbon,” which the Obama Administration had adopted as a component of its cost-benefit analyses. An interagency working group had produced a technical support document with recommendations for monetizing the social cost of carbon, allowing climate change impacts to be weighed alongside other costs and benefits, and recommended a rate of \$36 per ton of CO₂ equivalent for 2015 and \$42 by 2020.

President Trump’s Order disbanded the working group, and withdrew the technical support document and its subsequent updates. It instructed that any monetization of the costs of greenhouse gas emissions should be calculated consistent with general cost-benefit guidance dating from the George W. Bush Administration. The Office of Management and Budget (OMB) reportedly is considering how to implement the Executive Order, and in October 2017, [EPA released a regulatory impact analysis](#) of the Clean Power Plan that downgraded the cost of carbon emissions to between \$1 and \$6 per ton in 2020.

However, notwithstanding changes in administration policy, analysis of the social cost of carbon has become established as part of the review under statutes such as the National Environmental Policy Act and the Energy Policy and Conservation Act, and some courts have concluded that such analysis is required. Under those statutes, **the courts may well limit the Administration’s ability to eliminate or downplay—legally—consideration of the social cost of carbon.** And nine states have [announced a cooperative effort](#) to place a formal price on carbon emissions using state law.