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July 13, 2017



The First Six Months of the Trump Administration: Will Trump Successfully Deregulate U.S. EPA?

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During the campaign, Donald Trump made clear one priority would be deregulating federal agencies should he win the presidency. In particular, Candidate Trump stated U.S. EPA was at the top of his list for deregulation. In an interview on Fox News, Donald Trump stated the “Environmental Protection [Agency], what they do is a disgrace. Every week they come out with new regulations.” Fox News Sunday, Oct. 18, 2015.¹ Once elected, President Trump named Scott Pruitt, the Attorney General of Oklahoma, as Administrator of the U.S. EPA. Administrator Pruitt has been well known to challenge U.S. EPA’s regulations and have a pro-industry stance when it comes to environmental issues. So many people have asked, what would happen to the U.S. EPA and environmental regulation of industry?

After his inauguration, President Trump followed through on his deregulation promise by issuing an executive order on January 30, 2017 entitled “Presidential Executive Order on Reducing Regulation and Controlling Regulatory Costs.” The executive order called for agencies to identify two regulations to repeal for every new regulation proposed. Further, “agencies [we]re directed that the total incremental cost of all new regulations, including repealed regulations, to be finalized [in 2017] shall be no greater than zero, unless otherwise required by law or consistent with advice provided in writing by ... the Office of Management and Budget [(“OMB”).” Executive Order 13771. This Executive Order, in concept, sets up the framework for his deregulation policy.

In the first several months of his administration, President Trump proposed to cut the U.S. EPA by 31%, lay off 25% of the employees, and eliminate 56 programs. He also signed an executive order to repeal most of President Obama’s rules and policies related to climate change. However, the recent budget revealed that only \$208 million was cut from the \$8.2 billion that U.S. EPA requested for the 2017 fiscal budget. So at least in the short term, there will be no drastic cuts to U.S. EPA as proposed by President Trump.

Further, he requested a stay on issuing any new regulations pending review by the new administration. This action is not uncommon for a new administration. However, President Trump issued much fewer U.S. EPA Federal Register Filings than any of the previous three Presidents. Figure 1. President Trump also issued several executive orders that require either reconsideration or rescission of Obama-era regulations, executive orders, and guidance documents.² In addition, U.S. EPA sought public comment regarding evaluation of other existing U.S. EPA regulations; comments were due May 15, 2017. Evaluation of Existing Regulations; Proposed Rule, 82 Fed. Reg. 17793 (Apr. 13, 2017). Further, Administrator Pruitt has stayed several pending lawsuits over Obama-era regulations and has delayed the deadlines or effective dates of many regulations promulgated during President Obama’s Administration as provided below.

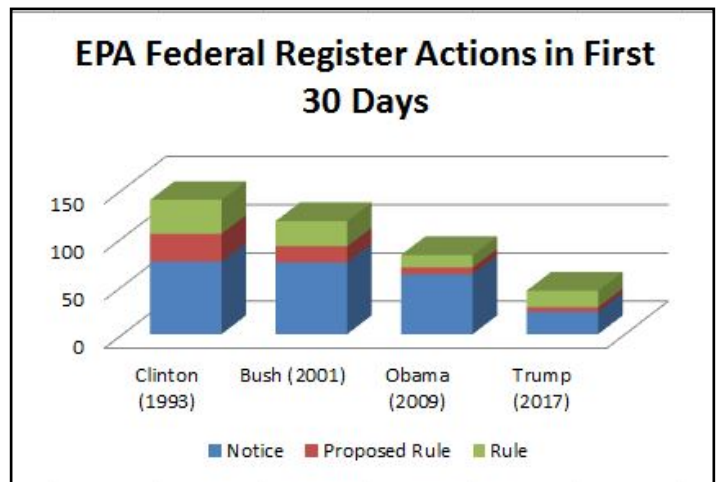


Figure 1. EPA Federal Register filings during the first 30 days of the past four administrations.

Regulations To Be Reviewed, Revised, or Rescinded; Delayed Effective or Implementation Dates for Regulations.

- 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule, 77 Fed. Reg. 62624 (Oct. 15, 2012);
- Clean Water Rule: Definition of "Waters of the United States," 80 Fed. Reg. 37054 (June 29, 2015);
- Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64661 (Oct. 23, 2015) (Clean Power Plan);
- Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64509 (Oct. 23, 2015);
- Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations; Proposed Rule, 80 Fed. Reg. 64966 (Oct. 23, 2015);
- Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule, 80 Fed. Reg. 67838 (Nov. 3, 2015);
- 2016 Oil and Gas New Source Performance Standards; Final Rule, 81 Fed. Reg. 35824 (June 3, 2016);
- Standards of Performance for Municipal Solid Waste Landfills; Final Rule, 81 Fed. Reg. 59332 (Aug. 29, 2016);
- Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills; Final Rule, 81 Fed. Reg. 59276 (Aug. 29, 2016);
- Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Final Rule, 82 Fed. Reg. 4594 (Jan. 13, 2017);
- Postponement of Certain Compliance Dates for Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category; Final Rule, 82 Fed. Reg. 19005 (Apr. 25, 2017); and
- Extension of Deadline for Promulgating Designations for the 2015 Ozone National Ambient Air Quality Standards; Final Rule, 82 Fed. Reg. 29246 (June 28, 2017).

Rescinded Executive Orders, Presidential Memorandum, and Presidential Reports.

- The Report of the Executive Office of the President of June 2013 (The President's Climate Action Plan);

- The Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards);
- Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change);
- The Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions);
- The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment); and
- The Presidential Memorandum of September 21, 2016 (Climate Change and National Security).

Rescinded Guidance and Technical Reports.

- Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (Feb. 2010);
- Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (May 2013);
- Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (Nov. 2013);
- Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (July 2015);
- Legal Memorandum Accompanying Clean Power Plan for Certain Issues (Nov. 2015);
- Final Guidance for Federal Departments and Agencies on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change in National Environmental Policy Act Reviews, which is referred to in "Notice of Availability," 81 Fed. Reg. 51866 (Aug. 5, 2016);
- Addendum to the Technical Support Document for Social Cost of Carbon: Application of the Methodology to Estimate the Social Cost of Methane and the Social Cost of Nitrous Oxide (Aug. 2016); and
- Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (Aug. 2016).

The non-governmental organizations (NGOs) and private citizens have taken note. Under the major environmental statutes, citizens can stand in the shoes of U.S. EPA and sue in federal court to force enforcement of statutory requirements and regulations. Since his inauguration, there have been a plethora of notices of intent to sue.

- CWA, Environmental Law & Policy Center (01/19/2017): Mandatory duty NOI regarding Ohio's 2016 303(d) List;

- CAA, Environmental Integrity Project and Sierra Club (02/09/2017): For failure to timely grant or deny a petition to object to Part 70 Operating Permit for the Welsh Power Plant in Titus County, Texas;
- CAA, Center for Biological Diversity and the Center for Environmental Health, Complaint (02/14/2017): For failure to make “bump up” determinations for Philadelphia and Washington D.C. marginal nonattainment areas for the 2008 ozone NAAQS;
- CAA, Environmental Integrity Project, Sierra Club, and Air Alliance Houston (02/23/2017): For failure to timely grant or deny a petition to object to Part 70 Operating Permit issued to the ExxonMobil Corporation for the Baytown Refinery in Harris County, Texas;
- CAA, Sierra Club (03/08/2017): For failure to conduct triennial reports to congress on Environmental and Conservation Impacts of the Renewable Fuel Standard and failure to conduct Anti-Backsliding Analysis or determine if mitigation measures are necessary;
- CWA, NRDC (03/09/2017): Failure to promulgate pretreatment standards for dental amalgam under section 307(b) of CWA³;
- CAA, Environmental Integrity Project, Sierra Club, and Air Alliance Houston (03/10/2017): For failure to grant or deny a petition to object to Part 70 operating permit for the Port Arthur Refinery in Jefferson County, Texas;
- CAA, Sierra Club (03/13/2017): For failure to grant or deny section 126 petition filed by Connecticut regarding Brunner Island Steam Electric Station in York County, Pennsylvania;
- CAA, Center for Biological Diversity and the Center for Environmental Health, Complaint (03/14/2017): For failure to make findings of failure to submit for 2008 ozone NAAQS nonattainment areas state implementation plans;
- CAA, Center for Biological Diversity and the Center for Environmental Health (03/14/2017): For failure to make findings of failure to submit for 2008 ozone NAAQS nonattainment areas state implementation plans;
- CAA, State of Connecticut, Complaint (03/20/2017): Failure to grant or deny section 126 petition filed by Connecticut regarding Brunner Island Steam Electric Station in York County, Pennsylvania;
- CAA, State of Connecticut (03/20/2017): Failure to grant or deny section 126 petition filed by Connecticut regarding Brunner Island Steam Electric Station in York County, Pennsylvania;
- CAA, Chesapeake Climate Action Network, Sierra Club, Environmental Integrity Project and Physicians for Social Responsibility, Chesapeake, Inc. (04/26/2017): For failure to timely respond to petition to object to the proposed Title V Operating Permit for the Fort Smallwood complex;
- CWA, Connecticut Fund for the Environment; Natural Resources Defense Council; Riverkeeper; Waterkeeper Alliance; Raritan Baykeeper; Bronx Council for Environmental Quality; Newtown Creek Alliance; Jamaica Bay Ecowatchers; New York City Water (04/27/17): For failure to approve or disapprove NYS's primary contact recreation criteria;
- CWA, NRDC, Complaint (05/08/2017): Complaint related to challenge to alleged refusal to designate for NPDES permitting discharges in the Baltimore watershed;
- CWA, NRDC (05/08/2017): For refusal to designate for NPDES permitting certain discharges in LA watershed;
- CAA, Small Retailers Coalition (05/18/2017): For EPA's noncompliance with sections 603 and 604 of the RFA;
- CAA, Center for Biological Diversity, Center for Environmental Health (06/07/2017): For failure to take final action regarding ozone nonattainment areas state implementation plans to address Photochemical Assessment Monitoring Stations (PAMS); and
- CAA, Center for Biological Diversity, the Center for Environmental Health and the Sierra Club (06/21/2017): For failure to perform mandatory duty to ensure adequate protection against conflicts of interest in air pollution permitting and enforcement.

It is important to note that Administrator Pruitt has not finalized any major environmental regulations since President Trump took office. In fact, on June 27, 2017, Administrator Pruitt signed his first “major regulation”: the Proposed Rule: Definition of “Waters of the United States” – Recodification of Pre-existing Rules. Once published in the Federal Register, this proposed rule will go through a 30-day notice and comment rulemaking where it will receive scrutiny from environmentalists. U.S. EPA must review and respond to comments on the proposed rule. Only after this, can U.S. EPA issue a final rule. Once Administrator Pruitt finalizes this rule, expect NGOs and concerned citizens to challenge the rule in federal court. This will be the fate of any regulation finalized by Administrator Pruitt.

On July 3, 2017, the D.C. Circuit Court of Appeals acted on one of Administrator Pruitt's attempts to slow environmental rulemaking. In *Clear Air Council v. Pruitt*, No. 17-1145 (D.C. Cir. 2017), the Circuit Court vacated a stay of the New Source Performance Standards (NSPS) for fugitive emissions of methane and other pollutants by the oil and natural gas industries. Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule, 81 Fed. Reg. 35824 (June 3, 2016). Several Industry Groups filed a petition for reconsideration of this regulation; in a letter dated April 18, 2017, Administrator Pruitt agreed to reconsider the rule and issued a 90-day stay of the compliance date for the fugitive emissions requirements. On June 16, 2017, EPA issued a notice of proposed rulemaking in which U.S. EPA proposed to extend the stay to two years. NGOs filed a motion with the Circuit Court to vacate the stay. The Circuit Court found that issuance of a stay was a final agency action over which it had jurisdiction and vacated the stay arguing there was no statutory authority for U.S. EPA to issue the stay pending reconsideration.⁴ It is expected there will be similar judicial review for other major rules.

Deregulating U.S. EPA may be a priority for President Trump but it will not be easy. Citizen suits and mounting litigation will slow any attempt to streamline U.S. EPA's regulations. While there is much uncertainty regarding his success at deregulation, it is clear that Administrator Pruitt's actions will be scrutinized and challenged these next four years.

¹ Full Transcript can be found at https://www.realclearpolitics.com/video/2015/10/18/full_replay_and_transcript_donald_trump_with_fncs_chris_wallace.html, last visited July 6, 2017.

² This does not include additional rules that could impact the environment that the Secretary of the Interior must reconsider, revise, or rescind.

³ U.S. EPA settled with NRDC and reinstated the rule on June 14, 2017. Effluent Limitations Guidelines and Standards for the Dental Category; Final Rule, 82 Fed. Reg. 27154 (June 14, 2017).

⁴ Justice Brown dissented arguing that a stay is not a final agency action; thus, the Circuit Court did not have jurisdiction to hear the motion.