



Institute for
Policy Integrity

NEW YORK UNIVERSITY SCHOOL OF LAW

FOR IMMEDIATE RELEASE - March 28, 2017

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STATEMENTS ON ENERGY & CLIMATE EXECUTIVE ORDER

With a new [executive order](#), President Trump is aiming to dismantle many critical policies and practices that protect public health and the environment. Of particular note, the order targets the EPA's Clean Power Plan; the Department of the Interior's moratorium on leasing federal lands for coal mining (and the associated review of the coal leasing program); and the [Social Cost of Carbon](#), which federal agencies use to evaluate the economic damages of carbon dioxide emissions.

Some of our legal experts have issued statements on these components of the Executive Order:

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Richard Revesz, Director of the Institute for Policy Integrity at NYU School of Law, released the following statement on the Executive Order's treatment of the Clean Power Plan:

The Executive Order does not make the Clean Power go away. This is the first move of a long chess game that will take years to unfold, and future moves will be far more challenging.

Despite the hoopla, the Executive Order has no legal significance at all. For anything to happen on this front, EPA will need to initiate a notice and comment rulemaking process that has many significant built-in hurdles. The agency will need to propose a rule explaining the legal, economic, and scientific basis for its change of position. And it will need to not only justify the merits of this new approach but also provide a convincing explanation for why it is departing from the approach embodied in the Clean Power Plan. During the comment period, EPA is likely to receive millions of comments—just as it did for the Clean Power Plan. And when the agency promulgates its final rule, it will need to respond to all material comments.

Then, the litigation will start, first in the DC Circuit and then, perhaps, in the Supreme Court. This issue might not be resolved before the 2020 election, so the fate of the Clean Power Plan might ultimately be determined by the winner of that election.

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Jayni Hein, Policy Director at the Institute for Policy Integrity at NYU School of Law, released the following statement on the coal moratorium:

Lifting the moratorium will allow new 20-year coal leases to be issued using outdated fiscal terms, depriving taxpayers of fair market value for this publicly owned resource.

In ending the review of the coal program, the Department of Interior would miss a critical opportunity to harmonize coal leasing with environmental goals by using higher royalty rates or setting a carbon budget for leasing on public lands.

For the first time in history, the moratorium and corresponding environmental review set Interior on a course to systematically evaluate and account for the climate effects of federal coal leasing. Coal produced from federal lands accounts for as much as 10% of all U.S. greenhouse gas emissions, yet Interior has failed to address this impact in a comprehensive manner. This is so, even as Interior's own public lands suffer the effects of reduced snowpack, more severe droughts, and increasingly costly wildfires as a result of climate change.

With respect to climate policy, the moratorium and review afforded the opportunity to step back and do two critical things: quantify the greenhouse gas emissions associated with federal coal leasing and the cost of those emissions; and analyze potential adjustments to coal leasing to tailor the program to climate or other goals - such as maximizing returns to the taxpayer. In the case of coal leasing, these two goals are complementary, as independent analyses found that raising coal royalty rates would both reduce emissions and increase revenue to taxpayers.

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Richard Revesz, Director of the Institute for Policy Integrity at NYU School of Law, released the following statement on the Executive Order's treatment of the Social Cost of Carbon:

The Executive Order's approach for setting aside the Social Cost of Carbon is deeply misguided, and it will likely backfire.

The order apparently wants agencies to return to an approach from 2003, which did not monetize the benefits of carbon dioxide reductions. This approach was rejected by the Ninth Circuit in 2008 in Center for Biological Diversity v. NHTSA. And in 2016, in Zero Zone v. Department of Energy, the Ninth Circuit upheld the use of the Social Cost of Carbon, as developed by the Obama administration. Those two cases almost guarantee that the approach of the Executive Order will be deemed illegal by the courts. Or, if the Trump administration expects federal agencies to abandon the current approach but monetize the cost of emissions in some new way, it is leaving them without guidance. Nonetheless, these agencies would still face the very high hurdle of justifying their departure from the current approach in a way that meets the standards of judicial review.

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Additional Resources:

Our new [issue brief on the Social Cost of Carbon](#)

Our [recent reports on federal coal leasing](#)

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