

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

AMERICAN PETROLEUM INSTITUTE,)
 et al.,)
)
 Petitioners,)
)
 v.)
)
 UNITED STATES ENVIRONMENTAL)
 PROTECTION AGENCY, et al.,)
)
 Respondents.)
 _____)

No. 13-1108
(and consolidated cases)

**NOTICE OF EXECUTIVE
ORDER AND MOTION TO
HOLD CASES IN
ABEYANCE**

Notice of Executive Order and Motion to Hold Cases in Abeyance

Respondents United States Environmental Protection Agency et al.

(collectively, “EPA”) hereby provide notice of an Executive Order that addresses one of the final agency actions that is the subject of this case, and request that the Court hold these consolidated cases in abeyance until 30 days after EPA completes its review of that rule in light of the Executive Order. Petitioners have confirmed through counsel that they do not oppose the relief sought in this motion.

Respondent-Intervenors have represented that they will oppose this motion.

In support of this motion, EPA states as follows:

1. These consolidated cases involve challenges to three final EPA actions: (1) the rule entitled “Oil and Natural Gas Sector: New Source Performance

Standards and National Emission Standards for Hazardous Air Pollutants Reviews,” 77 Fed. Reg. 49,490 (Aug. 16, 2012) (“2012 NSPS Rule”); (2) the rule entitled “Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards,” 79 Fed. Reg. 79,018 (Dec. 31, 2014) (“2014 NSPS Rule”); and (3) the rule entitled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule,” 81 Fed. Reg. 35,823 (June 3, 2016) (“2016 NSPS Rule”).

2. Challenges to those final rules were consolidated under case No. 13-1108 on January 4, 2017. ECF Dkt #1654072.¹ Pursuant to EPA’s Motion to Extend Briefing Format Deadline (Dkt. #1666167), the Court ordered the parties to submit a proposed briefing format by May 19, 2017. Dkt. #1668439.

3. On March 28, 2017, the President signed an Executive Order entitled *Promoting Energy Independence and Economic Growth* (hereinafter “Executive Order”). See Attachment A hereto. The Executive Order establishes the policy of the United States that executive departments and agencies “immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree

¹ In that Order, the Court severed a challenge to the 2012 NSPS Rule brought by environmental groups and held that challenge (No. 16-1425) in abeyance.

necessary to protect the public interest or otherwise comply with the law.” Id., Section 1(c). The Executive Order further instructs EPA, *inter alia*, to “review” the 2016 NSPS Rule as well as “any rules and guidance issued pursuant to it, for consistency with th[is] policy” Id., Section 7. The Executive Order further provides that “if appropriate, [the agency] shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.” Id.

4. In accordance with the Executive Order, on March 28, 2017, the EPA Administrator signed a Federal Register notice announcing that the Agency is “reviewing the 2016 Oil and Gas New Source Performance Standards (Rule), 81 FR 35,824 (June 3, 2016), and, if appropriate, will initiate proceedings to suspend, revise, or rescind it.” See Attachment B hereto, page 1. EPA further explained that: “Pursuant to the Executive Order, EPA is initiating its review of this Rule and providing advanced notice of forthcoming rulemaking proceedings consistent with the President’s policies. If EPA’s review concludes that suspension, revision, or rescission of this Rule may be appropriate, EPA’s review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.” Id., page 3.

5. Agencies have inherent authority to reconsider past decisions and to revise, replace or repeal a decision to the extent permitted by law and supported by a reasoned explanation. FCC v. Fox Television Stations, Inc., 556 U.S. 502, 515 (2009); Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co., 463 U.S. 29, 42 (1983) (“State Farm”). EPA’s interpretations of statutes it administers are not “carved in stone” but must be evaluated “on a continuing basis,” for example, “in response to . . . a change in administrations.” Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs., 545 U.S. 967, 981 (2005) (internal quotation marks and citations omitted). See also Nat’l Ass’n of Home Builders v. EPA, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (a revised rulemaking based “on a reevaluation of which policy would be better in light of the facts” is “well within an agency’s discretion,” and “[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations”) (quoting State Farm, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part)). The Clean Air Act complements EPA’s inherent authority to reconsider prior rulemakings by providing the agency with broad authority to prescribe regulations as necessary to carry out the Administrator’s authorized functions under the statute. 42 U.S.C. § 7601(a). In light of EPA’s pending review of the 2016 NSPS Rule, abeyance of

these consolidated cases until 30 days after EPA's review of the rule pursuant to the Executive Order is warranted.

6. While these consolidated cases include previously-filed challenges to the 2012 and 2014 NSPS Rules, abeyance of these cases as a whole is appropriate given that the 2016 NSPS Rule modified the regulatory text enacted in 2012 and 2014, and therefore these three rulemakings logically should be considered together. In any event, once EPA has determined whether it will initiate a rulemaking addressing the 2016 Rule, the parties can consider what course is appropriate for whatever remains of Petitioners' challenges to the 2012 and 2014 Rules and file a motion to govern accordingly.

7. No party will be prejudiced by the relief requested in this motion. This is particularly clear given the current posture of the case here. Briefing has not yet commenced and the requested abeyance will preserve Petitioners' challenges and the parties' respective positions while EPA conducts the review of the 2016 NSPS Rule mandated by the Executive Order. Once that review concludes, the agency will move for any additional relief appropriate in light of its planned course of action.

For these reasons, EPA respectfully requests that the Court hold this case in abeyance until 30 days after EPA completes its review of the 2016 NSPS Rule

pursuant to the Executive Order. EPA would be willing to submit status reports every 60 days during the abeyance period if that would be helpful to the Court.

Respectfully submitted,

JEFFREY H. WOOD

Acting Assistant Attorney General

/s/ Amanda Shafer Berman

AMANDA SHAFER BERMAN

U.S. Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

P.O. Box 7611

Washington, D.C. 20044

(202) 514-1950

amanda.berman@usdoj.gov

DATED: April 7, 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Notice of Executive Order and Motion to Hold Cases in Abeyance complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains 1,080 words according to the count of Microsoft Word and therefore is within the word limit of 5,200 words.

Dated: April 7, 2017

/s/ Amanda Shafer Berman
Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Executive Order and Motion to Hold Cases in Abeyance was today served electronically through the court's CM/ECF system on all registered counsel.

/s/ Amanda Shafer Berman
Counsel for Respondent

DATED: April 7, 2017

Attachment A

THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE

March 28, 2017

EXECUTIVE ORDER

- - - - -

PROMOTING ENERGY INDEPENDENCE AND ECONOMIC GROWTH

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. (a) It is in the national interest to promote clean and safe development of our Nation's vast energy resources, while at the same time avoiding regulatory burdens that unnecessarily encumber energy production, constrain economic growth, and prevent job creation. Moreover, the prudent development of these natural resources is essential to ensuring the Nation's geopolitical security.

(b) It is further in the national interest to ensure that the Nation's electricity is affordable, reliable, safe, secure, and clean, and that it can be produced from coal, natural gas, nuclear material, flowing water, and other domestic sources, including renewable sources.

(c) Accordingly, it is the policy of the United States that executive departments and agencies (agencies) immediately review existing regulations that potentially burden the development or use of domestically produced energy resources and appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest or otherwise comply with the law.

(d) It further is the policy of the United States that, to the extent permitted by law, all agencies should take appropriate actions to promote clean air and clean water for the American people, while also respecting the proper roles of the Congress and the States concerning these matters in our constitutional republic.

(e) It is also the policy of the United States that necessary and appropriate environmental regulations comply with the law, are of greater benefit than cost, when permissible, achieve environmental improvements for the American people, and are developed through transparent processes that employ the best available peer-reviewed science and economics.

Sec. 2. Immediate Review of All Agency Actions that Potentially Burden the Safe, Efficient Development of Domestic Energy Resources. (a) The heads of agencies shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that potentially burden the development or use of domestically produced energy resources, with particular attention to oil, natural gas, coal, and nuclear energy resources. Such review shall not include agency actions that are mandated by law, necessary for the public interest, and consistent with the policy set forth in section 1 of this order.

(b) For purposes of this order, "burden" means to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources.

(c) Within 45 days of the date of this order, the head of each agency with agency actions described in subsection (a) of this section shall develop and submit to the Director of the Office of Management and Budget (OMB Director) a plan to carry out the review required by subsection (a) of this section. The plans shall also be sent to the Vice President, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality. The head of any agency who determines that such agency does not have agency actions described in subsection (a) of this section shall submit to the OMB Director a written statement to that effect and, absent a determination by the OMB Director that such agency does have agency actions described in subsection (a) of this section, shall have no further responsibilities under this section.

(d) Within 120 days of the date of this order, the head of each agency shall submit a draft final report detailing the agency actions described in subsection (a) of this section to the Vice President, the OMB Director, the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, and the Chair of the Council on Environmental Quality. The report shall include specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency actions that burden domestic energy production.

(e) The report shall be finalized within 180 days of the date of this order, unless the OMB Director, in consultation with the other officials who receive the draft final reports, extends that deadline.

(f) The OMB Director, in consultation with the Assistant to the President for Economic Policy, shall be responsible for coordinating the recommended actions included in the agency final reports within the Executive Office of the President.

(g) With respect to any agency action for which specific recommendations are made in a final report pursuant to subsection (e) of this section, the head of the relevant agency shall, as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding, those actions, as appropriate and consistent with law. Agencies shall endeavor to coordinate such regulatory reforms with their activities undertaken in compliance with Executive Order 13771 of January 30, 2017 (Reducing Regulation and Controlling Regulatory Costs).

Sec. 3. Rescission of Certain Energy and Climate-Related Presidential and Regulatory Actions. (a) The following Presidential actions are hereby revoked:

(i) Executive Order 13653 of November 1, 2013 (Preparing the United States for the Impacts of Climate Change);

(ii) The Presidential Memorandum of June 25, 2013 (Power Sector Carbon Pollution Standards);

(iii) The Presidential Memorandum of November 3, 2015 (Mitigating Impacts on Natural Resources from Development and Encouraging Related Private Investment); and

(iv) The Presidential Memorandum of September 21, 2016 (Climate Change and National Security).

(b) The following reports shall be rescinded:

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

(ii) The Report of the Executive Office of the President of March 2014 (Climate Action Plan Strategy to Reduce Methane Emissions).

(c) The Council on Environmental Quality shall rescind its final guidance entitled "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 (August 5, 2016).

(d) The heads of all agencies shall identify existing agency actions related to or arising from the Presidential actions listed in subsection (a) of this section, the reports listed in subsection (b) of this section, or the final guidance listed in subsection (c) of this section. Each agency shall, as soon as practicable, suspend, revise, or rescind, or publish for notice and comment proposed rules suspending, revising, or rescinding any such actions, as appropriate and consistent with law and with the policies set forth in section 1 of this order.

Sec. 4. Review of the Environmental Protection Agency's "Clean Power Plan" and Related Rules and Agency Actions. (a) The Administrator of the Environmental Protection Agency (Administrator) shall immediately take all steps necessary to review the final rules set forth in subsections (b) (i) and (b) (ii) of this section, and any rules and guidance issued pursuant to them, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules. In addition, the Administrator shall immediately take all steps necessary to review the proposed rule set forth in subsection (b) (iii) of this section, and, if appropriate, shall, as soon as practicable, determine whether to revise or withdraw the proposed rule.

(b) This section applies to the following final or proposed rules:

(i) The final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 *Fed. Reg.* 64661 (October 23, 2015) (Clean Power Plan);

(ii) The final rule entitled "Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," 80 *Fed. Reg.* 64509 (October 23, 2015); and

(iii) The proposed rule entitled "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 (October 23, 2015).

(c) The Administrator shall review and, if appropriate, as soon as practicable, take lawful action to suspend, revise, or rescind, as appropriate and consistent with law, the "Legal Memorandum Accompanying Clean Power Plan for Certain Issues," which was published in conjunction with the Clean Power Plan.

(d) The Administrator shall promptly notify the Attorney General of any actions taken by the Administrator pursuant to this order related to the rules identified in subsection (b) of this section so that the Attorney General may, as appropriate, provide notice of this order and any such action to any court with jurisdiction over pending litigation related to those rules, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this

order, pending the completion of the administrative actions described in subsection (a) of this section.

Sec. 5. Review of Estimates of the Social Cost of Carbon, Nitrous Oxide, and Methane for Regulatory Impact Analysis.

(a) In order to ensure sound regulatory decision making, it is essential that agencies use estimates of costs and benefits in their regulatory analyses that are based on the best available science and economics.

(b) The Interagency Working Group on Social Cost of Greenhouse Gases (IWG), which was convened by the Council of Economic Advisers and the OMB Director, shall be disbanded, and the following documents issued by the IWG shall be withdrawn as no longer representative of governmental policy:

(i) Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (February 2010);

(ii) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (May 2013);

(iii) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (November 2013);

(iv) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (July 2015);

(v) 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 (August 2016); and

(vi) Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis (August 2016).

(c) Effective immediately, when monetizing the value of changes in greenhouse gas emissions resulting from regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, agencies shall ensure, to the extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A-4 of September 17, 2003 (Regulatory Analysis), which was issued after peer review and public comment and has been widely accepted for more than a decade as embodying the best practices for conducting regulatory cost-benefit analysis.

Sec. 6. Federal Land Coal Leasing Moratorium. The Secretary of the Interior shall take all steps necessary and appropriate to amend or withdraw Secretary's Order 3338 dated January 15, 2016 (Discretionary Programmatic Environmental Impact Statement (PEIS) to

Modernize the Federal Coal Program), and to lift any and all moratoria on Federal land coal leasing activities related to Order 3338. The Secretary shall commence Federal coal leasing activities consistent with all applicable laws and regulations.

Sec. 7. Review of Regulations Related to United States Oil and Gas Development. (a) The Administrator shall review the final rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," 81 *Fed. Reg.* 35824 (June 3, 2016), and any rules and guidance issued pursuant to it, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules.

(b) The Secretary of the Interior shall review the following final rules, and any rules and guidance issued pursuant to them, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules:

(i) The final rule entitled "Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands," 80 *Fed. Reg.* 16128 (March 26, 2015);

(ii) The final rule entitled "General Provisions and Non-Federal Oil and Gas Rights," 81 *Fed. Reg.* 77972 (November 4, 2016);

(iii) The final rule entitled "Management of Non-Federal Oil and Gas Rights," 81 *Fed. Reg.* 79948 (November 14, 2016); and

(iv) The final rule entitled "Waste Prevention, Production Subject to Royalties, and Resource Conservation," 81 *Fed. Reg.* 83008 (November 18, 2016).

(c) The Administrator or the Secretary of the Interior, as applicable, shall promptly notify the Attorney General of any actions taken by them related to the rules identified in subsections (a) and (b) of this section so that the Attorney General may, as appropriate, provide notice of this order and any such action to any court with jurisdiction over pending litigation related to those rules, and may, in his discretion, request that the court stay the litigation or otherwise delay further litigation, or seek other appropriate relief consistent with this order, until the completion of the administrative actions described in subsections (a) and (b) of this section.

Sec. 8. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
March 28, 2017.

#

Attachment B

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 60****[FRL-XXXX-XX-XXX]****Notice of Review of the 2016 Oil and Gas New Source Performance Standards for New, Reconstructed, and Modified Sources****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces it is reviewing the 2016 Oil and Gas New Source Performance Standards, found at 40 CFR Part 60 subpart OOOOa, and, if appropriate, will initiate reconsideration proceedings to suspend, revise or rescind this rule.

DATES: This document is effective [**Insert date of publication in the Federal Register**].

FOR FURTHER INFORMATION CONTACT:

Mr. Peter Tsirigotis, Sector Policies and Programs Division (D205-01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: (888) 627-7764; email address: *airaction@epa.gov*.

SUPPLEMENTARY INFORMATION: The EPA announces it is reviewing the 2016 Oil and Gas New Source Performance Standards (Rule) 81 FR 35,824 (June 3, 2016), and, if appropriate, will initiate proceedings to suspend, revise, or rescind it.

I. Background

Section 111 of the Clean Air Act authorizes the EPA to issue nationally applicable New Source Performance Standards (NSPS) limiting air pollution from “new sources” in source

categories that cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. 42 U.S.C. Section 7411(b)(1). Under this authority, the EPA had regulated sulfur dioxide emissions from natural gas processing and volatile organic chemicals (VOCs) from a number of equipment and operations at oil and gas facilities. 40 CFR part 60 subpart OOOO. In 2016, the EPA promulgated this Rule, which expanded the existing NSPS by requiring methane reductions from previously regulated sources and limiting methane and VOCs from other types of new oil and gas facilities never before regulated under Section 111.

Several state and industry petitioners challenged this Rule in the U.S. Court of Appeals for the District of Columbia alleging, *inter alia*, that EPA acted arbitrarily and capriciously, and in excess of statutory authority. *See, e.g., West Virginia v. EPA*, 16-1264, State Petitioners' Nonbinding Statement of the Issues to be Raised. These cases have been consolidated and are pending before the court. Many of these parties also submitted petitions for reconsideration of this Rule to EPA. The Agency has not yet acted on these petitions.

II. Initiation of Review Of This Rule

On March 28, 2017, President Trump issued an Executive Order establishing a national policy in favor of energy independence, economic growth, and the rule of law. The purpose of that Executive Order is to facilitate the development of U.S. energy resources—including oil and gas—and to reduce unnecessary regulatory burdens associated with the development of those resources. The President has directed agencies to review existing regulations that potentially burden the development of domestic energy resources, and appropriately suspend, revise, or rescind regulations that unduly burden the development of U.S. energy resources beyond what is necessary to protect the public interest or otherwise comply with the law. The Executive Order also directs agencies to take appropriate actions, to the extent permitted by law, to promote clean

air and clean water while also respecting the proper roles of Congress and the States. This Executive Order specifically directs EPA to review and, if appropriate, initiate proceedings to suspend, revise or rescind this Rule.

Pursuant to the Executive Order, EPA is initiating its review of this Rule and providing advanced notice of forthcoming rulemaking proceedings consistent with the President's policies. If EPA's review concludes that suspension, revision or rescission of this Rule may be appropriate, EPA's review will be followed by a rulemaking process that will be transparent, follow proper administrative procedures, include appropriate engagement with the public, employ sound science, and be firmly grounded in the law.

EPA's ability to revisit existing regulations is well-grounded in the law. Specifically, the agency has inherent authority to reconsider past decisions and to rescind or revise a decision to the extent permitted by law when supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("Fox"); *Motor Vehicle Manufacturers Ass'n of the United States, Inc., et al. v. State Farm Mutual Automobile Insurance Co., et al.*, 463 U.S. 29, 42 (1983) ("State Farm"). Moreover, the Clean Air Act itself authorizes EPA to reconsider its rulemakings. 42 U.S.C. § 7607(b)(1), (d)(7)(B). The Clean Air Act complements the EPA's inherent authority to reconsider prior rulemakings by providing the agency with broad authority to prescribe regulations as necessary. 42 USC § 7601(a). The authority to reconsider prior decisions exists in part because EPA's interpretations of statutes it administers "are not carved in stone" but must be evaluated "on a continuing basis," *Chevron U.S.A. Inc. v. NRDC, Inc.*, 467 U.S. 837, 857-58 (1984). This is true when—as is the case here—review is undertaken "in response to . . . a change in administrations." *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967, 981 (2005). Importantly, such a revised decision need

not be based upon a change of facts or circumstances. Rather, a revised rulemaking based “on a reevaluation of which policy would be better in light of the facts” is “well within an agency’s discretion,” and “[a] change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency’s reappraisal of the costs and benefits of its programs and regulations.” *National Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 & 1043 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514-15; quoting *State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part)).

In conducting this review, EPA will follow each of the principles and policies set forth in the Executive Order, consistent with the EPA’s statutory authority. The Agency will reevaluate whether this Rule or alternative approaches are appropriately grounded in EPA’s statutory authority and consistent with the rule of law. The EPA will assess whether this Rule or alternative approaches would appropriately promote cooperative federalism and respect the authority and powers that are reserved to the States. EPA will also examine whether this Rule or alternative approaches effect the Administration’s dual goals of protecting public health and welfare while also supporting economic growth and job creation. EPA will review whether this Rule or alternative approaches appropriately maintain the diversity of reliable energy resources and encourage the production of domestic energy sources to achieve energy independence and security.

Additionally, EPA will assess this Rule and alternative approaches to determine whether they will provide benefits that substantially exceed their costs. In taking any actions subsequent

to this review, EPA will use its appropriated funds and agency resources wisely by firmly
grounding in the statute its actions to protect public health and welfare.

Dated: March 28, 2017.

A handwritten signature in blue ink that reads "Scott Pruitt". The signature is written in a cursive style with a long horizontal line extending to the right from the end of the name.

E. Scott Pruitt,
Administrator.