

THE JOURNAL OF FEDERAL AGENCY ACTION

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Environmental Protection Agency's Deregulatory Initiative to "Power the Great American Comeback"

Rich Gold, Susan G. Lafferty, Andy Emerson,
Dimitrios J. Karakitsos, and Maggie P. Pahl*

In this article, the authors review the steps the Environmental Protection Agency has taken or will be taking in a stated effort to cut the cost of environmental regulation.

Environmental Protection Agency (EPA) Administrator Lee Zeldin has announced that EPA will undertake 31 distinct actions in an effort to advance President Donald Trump's Day One executive orders (EOs) to "unleash American energy, revitalize the auto industry, restore the rule of law, and give power back to states."

This announcement aims to cut the cost of environmental regulation. Zeldin's sweeping announcement was broken down into three goals: unleashing American energy, lowering the cost of living for American families, and advancing cooperative federalism.

The deregulatory actions will address myriad regulations impacting water, air, and climate rules for power plants, oil and gas companies, vehicle emissions, and manufacturing and industrial facilities. The broad greenhouse gas (GHG) reporting rule will be reconsidered, and EPA wants to overhaul the "social cost of carbon" that puts a price tag on climate-warming carbon dioxide (CO₂) emissions (currently \$190 per ton). But arguably the centerpiece of this announcement is the reconsideration of the agency's 2009 finding that GHG contributes to climate change, endangering public health and welfare—the "endangerment finding." This finding serves as a building block for what Zeldin refers to as "climate change religion" and is the foundation for many of the actions EPA plans to reconsider.

Immediate Impact

Generally speaking, agencies have the authority to reconsider their regulations but must do so through a rulemaking process that provides notice and the opportunity for the public to comment, which is expected to include the need to consider any new scientific and technical evidence that may have been developed since the prior rulemaking. Therefore, such reconsideration, in and of itself, will not have an immediate impact as examined further below. The announcement was also light on detail, and it is not yet clear whether the Trump administration intends to revise some of the identified rules or eliminate them entirely. Further clarification is anticipated as Zeldin continues to redirect EPA in line with the current administration's priorities and as EPA begins taking concrete action.

There is a number of announced actions that will not require rulemaking and will have an immediate impact on how EPA operates on a day-to-day basis:

1. Zeldin has directed EPA to “focus on its core mission” and deprioritize enforcement of regulations that are “based on anything other than the best reading of a statute” or that might be considered constitutionally overbroad.
2. Zeldin announced that EPA will promptly revise its National Enforcement and Compliance Initiatives¹ to ensure enforcement efforts do not discriminate based on race and socioeconomic status (i.e., it will end targeted enhancement in localities previously identified as environmental justice (EJ) communities).
3. EPA has formally terminated the Biden administration's EJ and diversity, equity, and inclusion (DEI) initiatives and closed related offices.

The Rulemaking Process and Potential Challenges

Agencies may revoke their own regulations through a “rule-making process” outlined by the Administrative Procedure Act (APA). This involves issuing a Notice of Proposed Rulemaking (NPRM), soliciting public comments, and finalizing the decision.

While this process continues to evolve, particularly following the U.S. Supreme Court's decision limiting judicial deference to agency decision-making in *Loper Bright*, it remains a cornerstone of modern administrative law. Under applicable APA procedures, the process to amend or eliminate the rules outlined by EPA in these recent announcements will require considerable time for notice and public engagement via a commenting process. Traditionally, even just a single rulemaking typically takes at least eight months and often up to 24 months to propose and finalize.

Efforts to circumvent or unlawfully expedite the rulemaking process—such as ignoring or resubmitting technical data or conclusions developed during prior administrative proceedings—are vulnerable to legal challenge and would likely result in EPA facing lawsuits on process grounds. NPRMs may also face scrutiny to the extent that they are inconsistent with enabling statutes. Once a final rule is issued, it is expected that many, if not all, of these actions will be challenged in court, which could impact the effective date and further delay implementation. Indeed, the current push by EPA is an effort intended to finish the rulemaking process and, ideally, any subsequent associated litigation before the end of President Trump's term in office.

Similarly, any exercise of enforcement discretion that is violative of existing statutes or regulations (which, as noted above, are still valid until revoked through the formal rulemaking process), particularly if contrary to previously adopted scientific or technical conclusions, are subject to challenge. However, EPA has substantial discretion in deprioritizing enforcement, and a decision not to take an enforcement action is presumptively nonreviewable. Combined with the basis for not taking enforcement action laid out in the February 19, 2025, EO "Ensuring Lawful Governance and Implementing the President's 'Department of Governmental Efficiency' Deregulation Initiative,"² EPA appears to be in a strong position to deprioritize enforcement action and take the necessary time to move forward with rulemaking.

EPA Employee Termination

This massive deregulatory announcement comes in the wake of EPA seeking to terminate the employment of nearly 400 probationary employees in mid-February 2025 after a directive from the

Office of Personnel Management. Immediately following Zeldin's announcement, EPA eliminated all offices related to EJ and DEI (including the Office of Environmental Justice and External Civil Rights, Environmental Justice Division within all EPA regional offices and Office of Inclusive Excellence within the Office of Mission Support), officially terminating 171 employees placed on administrative leave³ in January 2025. The One Big Beautiful Bill Act included a 23 percent reduction in the EPA's funding for 2026. Rulemakings and litigation are time-intensive and require a lot of staff and management time. A reduced workforce could mean that, at some point in this deregulatory effort, there is not the requisite manpower to take action. It will also mean that other EPA activities—such as communication with stakeholders on day-to-day matters—could suffer.

Next Steps

Zeldin's announcement begins the process of what EPA has described as the "Biggest Deregulatory Action in U.S. History." But, it remains to be seen how effective EPA will be at implementing those actions. During the rulemaking process, the public gets to comment on the proposed actions, and these comments should help mold the outcomes. Litigation will invariably follow, so final outcomes will be unfolding for the next several years. Regulated parties should consider the impact of each regulatory action and participate in the process that will undoubtedly be reverberating for decades to come.

Announced Initiatives

Unleashing American Energy

- Reconsideration of regulations on power plants (Clean Power Plan 2.0);⁴
- Reconsideration of regulations throttling the oil and gas industry (OOOO b/c);⁵
- Reconsideration of Mercury and Air Toxics Standards that improperly targeted coal-fired power plants (MATS);⁶

- Reconsideration of mandatory Greenhouse Gas Reporting Program that imposed significant costs on the American energy supply (GHG Reporting Program);⁷
- Reconsideration of limitations, guidelines, and standards (ELG) for the Steam Electric Power Generating Industry to ensure low-cost electricity while protecting water resources (Steam Electric ELG);⁸
- Reconsideration of wastewater regulations for oil and gas development to help unleash American energy (Oil and Gas ELG);⁹ and
- Reconsideration of Biden-Harris Administration Risk Management Program rule that made America's oil and natural gas refineries and chemical facilities less safe (Risk Management Program Rule).¹⁰

Lowering the Cost of Living for American Families

- Reconsideration of light-duty, medium-duty, and heavy-duty vehicle regulations that provided the foundation for the Biden-Harris electric vehicle mandate (Car GHG Rules);¹¹
- Reconsideration of the 2009 Endangerment Finding and regulations and actions that rely on that Finding (Endangerment Finding);¹²
- Reconsideration of technology transition rule that forces companies to use certain technologies that increased costs on food at grocery stores and semiconductor manufacturing (Technology Transition Rule);¹³
- Reconsideration of Particulate Matter National Ambient Air Quality Standards that shut down opportunities for American manufacturing and small businesses (PM 2.5 NAAQS);¹⁴
- Reconsideration of multiple National Emission Standards for Hazardous Air Pollutants for American energy and manufacturing sectors (NESHAPs);¹⁵
- Restructuring the Regional Haze Program that threatened the supply of affordable energy for American families (Regional Haze);¹⁶
- Overhauling Biden-Harris administration's "Social Cost of Carbon";¹⁷

- Redirecting enforcement resources to EPA's core mission to relieve the economy of unnecessary bureaucratic burdens that drive up costs for American consumers (Enforcement Discretion);¹⁸ and
- Terminating Biden's Environmental Justice and DEI arms of the agency (EJ/DEI).¹⁹

Lowering the Cost of Living for American Families Advancing Cooperative Federalism

- Ending so-called "Good Neighbor Plan" that the Biden-Harris administration used to expand federal rules to more states and sectors beyond the program's traditional focus and led to the rejection of nearly all State Implementation Plans;²⁰
- Working with states and tribes to resolve massive backlog with State Implementation Plans and Tribal Implementation Plans that the Biden-Harris administration refused to resolve (SIPs/TIPs);²¹
- Reconsideration of exceptional events rulemaking to work with states to prioritize the allowance of prescribed fires within State and Tribal Implementation Plans (Exceptional Events);²²
- Reconstituting Science Advisory Board and Clean Air Scientific Advisory Committee (SAB/CASAC);²³
- Prioritizing coal ash program to expedite state permit reviews and update coal ash regulations (CCR Rule);²⁴ and
- Utilizing enforcement discretion to further North Carolina's recovery from Hurricane Helene.²⁵

In Summary

- EPA Administrator Lee Zeldin announced a major deregulation initiative in response to President Donald Trump's EOs.
- The announcement mainly consists of EPA providing notice of its intent to reconsider existing EPA regulations, but the agency will be required to carry out a formal rulemaking process to revoke or amend such rules, which can take months or even years to complete.

- EPA will exercise substantial discretion in deprioritizing enforcement to advance the president's Deregulation Initiative.
- Rolling back the endangerment finding is likely the top priority that will facilitate "reconsideration" of other rules.

Notes

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