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Trump Administration Will Propose Repealing Obama's Key Effort to Combat Climate Change

By Brady Dennis and Juliet Eilperin

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The Trump administration plans to scrap former president Barack Obama's signature plan for reducing greenhouse-gas emissions from the nation's power plants, arguing that the previous administration overstepped its legal authority, according to a 43-page proposal obtained Thursday by The Washington Post.

The proposal, which the administration plans to propose as early as Tuesday, comes months after President Trump issued a directive instructing the Environmental Protection Agency to begin rewriting the controversial 2015 regulation, known as the Clean Power Plan, as part of a broader effort to obliterate his predecessor's efforts to make combating climate change a top government priority.

In a copy of the proposed repeal, first reported by Bloomberg News, the EPA does not offer an alternative plan for regulating emissions of carbon dioxide, which the Supreme Court has ruled that the agency is obligated to do. Rather, the agency said it plans to seek public input on how best to cut emissions from natural-gas and coal-fired power plants.

"Any replacement rule that the Trump administration proposes will be done carefully and properly, within the confines of the law," EPA spokeswoman Liz Bowman said in an email.

A central piece of Obama's environmental legacy, the Clean Power Plan aims to slash the greenhouse-gas emissions that scientists agree are fueling the planet's rapid warming. It also was an integral part of the commitment U.S. officials made as part of a historic international climate accord signed in late 2015 in Paris, from which Trump has said he intends to withdraw.

The Clean Power Plan directed every state to form detailed plans to reduce CO2 emissions from such sources as coal-fired power plants, with the goal of decreasing carbon pollution by about one-third by 2030, compared with 2005 levels. But the regulation has been a lightning rod since its inception.

Environmental groups and other supporters have called it a much-needed measure to help nudge the nation toward cleaner sources of energy. Representatives of the oil and gas industry and other opponents argue that the EPA's regulations would unfairly force power-plant owners to shut down or essentially subsidize competing clean-energy industries.

From the start, the effort has been mired in litigation.

The central case in that fight, *West Virginia v. Environmental Protection Agency*, has had an unusual legal path. Early last year, the Supreme Court blocked the regulation's implementation after 27 states and a host of other opponents challenged its legality. Its 5 to 4 decision, which did not address the merits of the lawsuit, came just days before the sudden death of Justice Antonin Scalia.

With the Clean Power Plan's future on the line, a 10-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit in September 2016 held a marathon day of oral arguments on the case, trying to decipher whether the Obama administration's proposal went too far in trying to compel power plants to cut carbon-dioxide emissions.

But that court failed to issue a ruling before the Trump administration took office and requested time to reconsider the Clean Power Plan's future.

EPA Administrator Scott Pruitt, who in his previous role as Oklahoma attorney general sued the agency over the Clean Power Plan, has long argued that the Obama administration acted unlawfully. In particular, he and other opponents argued that the regulations required power plants to take actions "outside the fence line," rather than regulating activities that only take place on a particular facility. In addition, he argued that the Clean Power Plan set emissions limits that could be met only by subsidizing the creation of massive new amounts of wind and solar energy, while also limiting consumption of coal- and gas- powered electricity.

Hunton & Williams partner Joseph Stanko, a lawyer who represents coal industry clients, said in an interview that the proposed rule lays out a strong legal argument for why the previous administration overstepped its authority.

"You're not authorized to scour the United States for possible emissions reductions, and force a source to pay for that," Stanko said.

The EPA's effort to repeal the Clean Power Plan is almost certain to meet with another wave of legal challenges.

"We had a Clean Power Plan. What we're getting is a Dirty Power Plan," said David Doniger, senior attorney for climate and clean air at the Natural Resources Defense Council. He said that refusing to crack down on emissions could "leave tens of millions of Americans in greater danger from extreme weather and other climate impacts. And it will cause tens of thousands of early deaths and sicken hundreds of thousands more."

Doniger vowed that his group and others will again take to the courts.

"EPA is pretending the power industry still looks like those first isolated plants back in the days of Thomas Edison, serving only the immediate area around them," he said. "The courts are going to look at this very, very hard, and they are not going to buy this fictional view of the way the

industry works. Nor are they going to let EPA cook the books on science and economics.”

One of the areas that is likely to attract legal scrutiny is EPA’s cost-benefit analysis for the new rule. In developing the cost-benefit analysis, the administration offered different estimates for the public health benefits associated with regulating carbon dioxide from power plants.

The agency used its standard practice of assuming that fine particulate matter — or soot, also known as PM 2.5 — emitted from power plants — is deadly at any concentration, and calculated the benefits of its reduction accordingly. But in other parts of the plan it estimated that soot would no longer pose a lethal risk at a variety of low concentrations.

Several scientific assessments, including one commissioned by the EPA in 2010, have found that there is no reason to assume there’s any safe level of fine particulate air pollution.

The relationship between concentrations of fine particulate matter and risk of death “appears to [be] monotonic ... without a discernible ‘safe’ threshold,” wrote a group of experts from the American Heart Association in 2010. The World Health Organization has similarly concluded that “there is little evidence to suggest a threshold below which no adverse health effects would be anticipated” from particulate air pollution.

“It’s not a threshold pollutant,” Paul Billings, senior vice president for advocacy at the American Lung Association, said in an interview. “It looks like they’re cooking the books and cherry-picking data.”

In one chart, for example, the proposal suggested that the net benefits of limiting these emissions could drop from more than

\$28 billion in benefits to a \$700 million net cost, depending on whether one assumes that reducing soot levels below the current federal standards yields public health benefits.

In another section, EPA offers a scenario in which it does not factor in the health benefits of reducing nitrogen oxides and sulfur dioxide from power plants as they curb emissions to meet their carbon targets.

When the rule was issued, then-EPA Administrator Gina McCarthy said it would “bring major health benefits for American families” by curbing these combined pollutants.

“In 2030, this will mean up to 3,600 fewer premature deaths, 90,000 fewer asthma attacks in children, 1,700 fewer hospital admissions and avoiding 300,000 missed days of school and work,” McCarthy said.

“The bottom line is that this new Pruitt EPA analysis assumes that dirty air is safer to breathe than the Obama team did,” said Frank O’Donnell, who heads the advocacy group Clean Air

Watch, in an email.

But Stanko said that the fact that a new administration would take a different approach to crunching numbers is not surprising. “These are issues that are debated in cost-benefit analysis, and they’re not unique to climate,” he said.

EPA’s move to propose a new rule could affect the pending court case in the D.C. Circuit, but it will be up to the court to decide what happens to the ongoing litigation. Tim Profeta, who directs the Nicholas Institute for Environmental Policy Solutions, said in an email that it would make more sense to resolve the pending litigation than start a new rulemaking process given that EPA’s new proposal centers on the same question at issue in the case.

“The key takeaway from President Trump’s proposed repeal of the Clean Power Plan is that the D.C. Circuit should now rule on the legality of the Clean Power Plan,” Profeta said. “If the Trump rule was finalized, the same issues would once again come before the same court, but with the parties switching places, with the defenders of the Obama rule challenging the Trump rule, and vice versa. Rather than allowing this to drag on further, the court should simply decide the case that it has before it and clear up any dispute over the extent of EPA’s authority.”

Chris Mooney contributed to this report.

Brady Dennis is a national reporter for The Washington Post, focusing on the environment and public health issues. Juliet Eilperin is The Washington Post’s senior national affairs correspondent, covering how the new administration is transforming a range of U.S. policies and the federal government itself. She is the author of two books—one on sharks, and another on Congress, not to be confused with each other—and has worked for the Post since 1998.