

The Trump Administration Derailing (Nuclear) Administrative Action?

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Overview - United States Energy Direction? Misdirection? Redirection?

- ▶ Trump Executive Orders Dictating Federal Regulatory Changes
 - ▶ Rolling Back Burdensome Regulations,
 - ▶ Promoting Energy Independence, and
 - ▶ Rescinding Greenhouse Gas Regulatory Scheme
- ▶ Specific Retraction of Federal Standards for Social Cost of Carbon Consideration in Rulemaking
- ▶ Ongoing State Consideration of Measures to Support Nuclear

Executive Orders

▶ Executive Orders

- ▶ The U.S. Supreme Court has held that all executive orders from the President of the United States must be supported by the Constitution, whether from a clause granting specific power, or by Congress delegating such to the executive branch.
- ▶ Like both legislative statutes and regulations promulgated by government agencies, executive orders are subject to judicial review and may be overturned if the orders lack support by statute or the Constitution.
- ▶ All but one President has used Executive Orders

Executive Order 13771

Reducing Regulation and Controlling Regulatory Costs

- ▶ Issued January 30, 2017
- ▶ Purposes
 - ▶ To support the Executive Branch in implementing a policy of financial responsibility
 - ▶ Manage the costs of Federal Regulations which impose requirements, and costs, associated with private actions
 - ▶ For every new regulation issued, two prior regulations should be identified for elimination
 - ▶ Any new regulation be prudently managed and controlled through the budget process

Executive Order 13771

Reducing Regulation and Controlling Regulatory Costs

- ▶ Implementation of 'eliminate two' mandate
 - ▶ At the end of FY '2017 the total cost of regulatory changes shall be zero
 - ▶ Elimination shall be in conformance with the Administrative Procedure Act
 - ▶ Director of Office of Management and Budget shall issue guidance for elimination
 - ▶ Agencies to report annually total costs or cost savings of regulatory initiatives

Executive Order 13771

Reducing Regulation and Controlling Regulatory Costs

- ▶ Executive Order challenged in Court
 - ▶ Focus on costs only is arbitrary, and contrary to the Administrative Procedure Act process for issuing/amending regulations
 - ▶ White House response
 - ▶ Premature suit
 - ▶ Order complies with the Administrative Procedure Act

Executive Order 13777

Enforcing the Regulatory Reform Agenda

- ▶ Issued February 24, 2017
- ▶ Each agency to designate a Regulatory Reform Officer (RRO)
 - ▶ Assure agency conformance with other Executive Orders improving the regulatory processes, involving offsetting of new regulations, planning, retrospective review and elimination of programs and activities derived from authorities that have been rescinded
- ▶ Each agency to establish a Regulatory Reform Task Force
 - ▶ RRO plus 5 other
 - ▶ Evaluate regulations and make recommendations regarding repeal, replacement or modification

Executive Order 13777

Enforcing the Regulatory Reform Agenda

- ▶ Task Force to Identify Regulations that:
 - ▶ Eliminate jobs or job creation
 - ▶ Are outdated, unnecessary, or ineffective
 - ▶ Impose costs that exceed benefits
 - ▶ Create a serious inconsistency or interfere with regulatory reform initiatives
 - ▶ Inconsistent with statutory direction to avoid regulations not based on public information or reflect transparency
 - ▶ Derive from Executive Orders or Presidential directives that have been rescinded
 - ▶ Report to agency head regarding results every 90 days

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Issued March 28, 2017
- ▶ Policy
 - ▶ Promote clean and safe development of national energy resources
 - ▶ Avoid regulatory burdens that constrain economic growth and prevent job creation
 - ▶ Assure that electricity is affordable, reliable, safe, secure and clean, and that can be produced from coal, natural gas, nuclear material, flowing water, or other domestic sources, including renewable resources

Executive Order 13783

Promoting Energy Independence and Economic Growth

► Implementation

- Immediate Review of Agency Actions that potentially burden the safe, efficient development of domestic energy sources
 - Identify regulations which “potentially burden” the use of national energy resources, and in particular oil, natural gas, coal, and nuclear energy resources

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Rescind certain energy and climate-related Presidential and regulatory actions, including the Orders regarding:
 - ▶ Preparing the US for the impacts of climate change
 - ▶ Power sector carbon pollution standards
 - ▶ Climate change and national security
 - ▶ President's Climate Action Plan
 - ▶ Climate Action Plan Strategy to Reduce Methane Emissions
 - ▶ Council on Environmental Quality Guidance for Federal agencies on consideration of greenhouse gas emissions and the effects of climate change
- ▶ Executive agencies not finalize any regulation where costs exceed benefits

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Review of Environmental Protection Agency's "Clean Power Plan" and related rules and agency actions
 - ▶ EPA Administrator to review those rules and actions against the goals energy independence and economic growth
 - ▶ Rule on carbon pollution guidelines
 - ▶ Rule on greenhouse gas emissions from stationary electric generating units
 - ▶ Administrator shall review and as soon as practicable suspend, revise or rescind those rules and actions

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Social Cost of Carbon Actions
 - ▶ Agencies to use analyses of costs and benefits based on best available science
 - ▶ Disband the “Interagency Working Group on Social Cost of Greenhouse Gases” (IWG)
 - ▶ Withdraw numerous IWG guidance materials
 - ▶ Social Cost of Carbon for Regulatory Impact Analyses
 - ▶ Supporting Technical Support materials
- ▶ Coal Actions
 - ▶ Lifting of coal moratorium, Secretary of Interior 2016 Order
- ▶ Oil and Gas Development
 - ▶ Rescind, suspend, revise Oil and Gas Emission Standards rule

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Implications of Executive Order 13783
 - ▶ Significant shift in climate change role in federal policies
 - ▶ Disbanding Interagency Working Group
 - ▶ Rescinding technical documents used to support the analytical framework for considering Social Cost of Carbon in regulatory analyses
 - ▶ SCC used as tool to assess incremental climate impact from issuance of a unit of Carbon Dioxide to assign economic impact of emissions
 - ▶ Many different models
 - ▶ Used by Obama Administration to assert benefits from greenhouse gas programs
 - ▶ In lieu of SSC, use prior cost/benefit analysis guidance Office of Management and Budget Circular A-4
 - ▶ Evaluation of effects of proposed regulations, but no specific methodology

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Implications of Executive Order 13783
 - ▶ Competitive power markets
 - ▶ Perhaps little effect because focus may simply remain on inexpensive natural gas, low demand growth, and already planned buildouts of renewable sources under tax incentives
 - ▶ May extend life of some coal plants
 - ▶ Some states to continue implementing the Clean Power Plan
 - ▶ New York and Illinois nuclear benefits may not be effected as, at least in New York, the Zero Emissions Credit (ZEC) serves as the tool to determine nuclear credits and was based on an already published SSC figure.
 - ▶ Commercial efficiency standards
 - ▶ Energy Policy and Conservation Act directs DOE to develop efficiency standards for numerous industrial, commercial and residential products; substantial utility and manufacturer support

Executive Orders

Potential Impact on Nuclear Regulation

Nuclear Regulatory Commission Position

- ▶ The NRC is an independent agency, not directly responsible to the Executive Branch. Thus, the NRC is technically beyond the reach of specific measures in the Executive Orders
- ▶ NRC Chairman Svinicki commented at the NRC Regulatory Information Conference, in March, that nonetheless the Commission is taking a systematic look at the orders, and consider their “spirit and intent.”
- ▶ NRC Commissioner Baran noted that the NRC will continue its own Project AIM, intended to reduce costs. 151 proposals already under consideration.

Executive Orders

Developing Industry Views of Potential Impact on Nuclear Regulation

US Nuclear Energy Institute Initiative

- ▶ Reviewing, broadly, Agency Regulations Potentially Impacting Nuclear Plant Operation
 - ▶ Nuclear Regulatory Commission
 - ▶ Department of Commerce
 - ▶ Department of Energy
 - ▶ Environmental Protection Agency
 - ▶ Federal Energy Regulatory Commission
 - ▶ Department of Interior
 - ▶ Department of Labor
 - ▶ Department of Transportation

Executive Orders

Legal Status

Executive Order 13771

Reducing Regulation and Controlling Regulatory Costs

- ▶ On February 8, 2017, Environmental groups and the labor unions, filed a lawsuit against the implementation of Executive Order 13771. The lawsuit states that the passing of the Executive Order by the Trump Administration is unconstitutional by making federal agencies violate governing statutes, like the Administrative Procedure Act which establishes the way agencies pass regulations.
- ▶ On April 17, 2017, fourteen states filed an amici curiae in support of the Executive Order. The states argue that the Executive Order falls within allowed presidential authority and will benefit state governments.

Executive Orders Legal Status

Executive Order 13777

Enforcing the Regulatory Reform Agenda

- ▶ On April 13, 2017, EPA issued a notice soliciting comments on regulations that may be appropriate for repeal, replacement, or modification under Executive Order 13777 (82 Fed. Reg. 17793).
- ▶ Other agencies also establishing efforts to examine regulatory reform, including the Department of Commerce and Department of Interior

Executive Orders Legal Status

Executive Order 13783

Promoting Energy Independence and Economic Growth

- ▶ Ongoing agency review to culminate in 180 days to identify additional regulations and policies for rescission or reconsideration.

State Consideration of Nuclear Value

- ▶ Present deregulated rate markets placing cost pressure on nuclear
 - ▶ Low natural gas prices, low demand growth
 - ▶ Little or no credit for attributes such as zero-carbon emission, or baseload reliability/availability
- ▶ New York and Illinois have already addressed nuclear value
 - ▶ Facing potential closure of several nuclear facilities, the states adopted measures to support nuclear in the marketplace
 - ▶ New York - Zero Emissions Credits (ZEC)
 - ▶ Illinois - recognition of nuclear, solar and wind benefits in market pricing
- ▶ Other states in planning stages - Connecticut, Ohio, New Jersey

Questions?