

INSIGHTS

The First 100 Days: Executive Directives Impacting the Oil & Gas Pipeline Industry

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President Trump has [issued](#) 30 Executive Orders and 28 Executive Memoranda since taking office on January 20, 2017, despite his failure to pass any major laws. That is more Executive Orders than any President has issued in the first 100 days since World War II. Nearly one fourth of these executive actions have affected the pipeline industry, either directly or indirectly, as noted below:

Executive Orders and Memoranda Affecting Pipelines (January 20 – April 30, 2017)

- Jan. 20: Regulatory Freeze Memorandum
- Jan. 24: Memorandum requiring U.S. Steel be used in new pipeline construction or repair
- Jan. 24: Executive Order on streamlining high priority infrastructure projects
- Jan. 24: Memorandum expediting review and approval of Keystone XL
- Jan. 24: Memorandum expediting review and approval of Dakota Access Pipe Line
- Jan. 30: Executive Order on reducing regulation/controlling regulatory costs (the “2 for 1” rule rescinded for every 1 new rule given effect” Order)
- Feb. 24: Executive Order on enforcing the regulatory reform agenda
- Feb. 28: Executive Order reviewing existing scope of “waters of the U.S.” rules
- Mar. 28: Executive Order promoting energy independence/economic growth
- Apr. 20: Memorandum to Secretary of Commerce on Steel Imports and National Security
- Apr. 21: Executive Order on ‘Buy American/Hire American’ (referencing prior Memoranda requiring U.S. Steel for new pipe construction)

Several of these executive actions have been welcomed by the industry (e.g., the Memoranda regarding Keystone and Dakota Access, and review of the reach of the “waters of the U.S.” definition), while others are still pending implementation. A few have presented questions of interpretation, and one has presented new challenges for the industry.

As to questions of interpretation, the January 20th Regulatory Freeze and January 24th “2 for 1” limitation on promulgating new rules both exempt rules mandated by Congress, or, presumably, by federal court order or decree. They also exempt rules related to national security – arguably some pipelines designated as ‘critical energy infrastructure’ could fit that category – and rules pertaining to Agency organization or procedure. PHMSA, the Agency charged with oversight of U.S. pipeline safety, has yet to announce how it will proceed with several rulemakings that were pending on or about January 20, 2017. Some of those rulemakings were mandated by Congress and arguably all PHMSA proposed rules are related to

public safety, which is also exempt from the January 20 Regulatory Freeze Memorandum.

Another open question is whether the Regulatory Freeze applies only to rulemakings, or to guidance as well. That question is especially relevant for the pipeline industry, as PHMSA has issued more guidance than proposed rules in recent years, and industry has seen that guidance work its way into enforcement actions.

Similarly, the several Executive Memoranda requiring use of steel made in the U.S. for new pipeline construction and repairs actually creates new burdens on the pipeline industry. As [noted previously](#), the pipe used in new construction or repair is not all made in the U.S. currently. In addition, the Department of Commerce proposed to interpret these Executive Actions by extending the scope of the “made in U.S.” requirement beyond pipe, to pumps, valves and appurtenances. Industry has submitted [comments](#) to Commerce and expressed concern to the Administration, but this issue is yet to be resolved.

Although review or rescission of certain rules, and streamlining of permitting requirements, is appreciated by industry generally (the pipeline industry included), clarification of intent and implementation is necessary for companies to plan and operate their assets. It may be that the courts, or Congress, will have to provide clarity on some of these executive actions. That would result in delays and even further regulatory uncertainty, which was clearly not the intent.