

## The Trump Administration's Day-One Executive Actions: Impacts on Energy and Environmental Policy and More

Update

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On January 20, 2025, President Trump re-assumed the presidency with a flurry of executive orders and memoranda, many of which directly impacted energy and environmental issues. These orders included a production-minded strategy entitled "Unleashing American Energy," a short-term regulatory freeze, a declaration of a national energy emergency, a specific order regarding wind energy and an order establishing the new Department of Government Efficiency (DOGE). Other topics may have profound impacts on energy, like the trade executive order which may impact the supply chain for energy projects.

Bracewell's Policy Resolution Group has prepared a [source book of analytical material](#) on all the executive orders and more. We invite you to read through the material and contact us with questions. It has been said that so many orders came out on Day One precisely to shield any one order from too much criticism. In any event, the process of addressing all these executive actions is ongoing and iterative.

To get a sense of all that has happened, we have broken out a series of answers to frequently asked questions. Below is our thinking, although it is not yet dispositive.

### 1. What is an executive order anyway, and how far can it move the needle?

A presidential executive order is a signed directive from the president to federal agencies and officials of the executive branch, carrying the force of law. These orders allow presidents to move quickly on policy matters without congressional approval, making them powerful tools for implementing the president's agenda.

#### Related People

**Scott H. Segal**  
Partner  
**WASHINGTON, DC**  
+1.202.828.5845  
[scott.segal@bracewell.com](mailto:scott.segal@bracewell.com)

**E. Dee Martin**  
Partner  
**WASHINGTON, DC**  
+1.202.828.5818  
[dee.martin@bracewell.com](mailto:dee.martin@bracewell.com)

**Joshua C. Zive**  
Senior Principal  
**WASHINGTON, DC**  
+1.202.828.5838  
[joshua.zive@bracewell.com](mailto:joshua.zive@bracewell.com)

**Andrew Shaw**  
Partner  
**WASHINGTON, DC**  
+1.202.828.1707  
[andrew.shaw@bracewell.com](mailto:andrew.shaw@bracewell.com)

**Timothy J. Urban**  
Senior Principal  
**WASHINGTON, DC**  
+1.202.828.7625  
[timothy.urban@bracewell.com](mailto:timothy.urban@bracewell.com)

**Edward D. Krenik**  
Senior Principal

However, executive orders face significant limitations. First, they must be rooted in powers granted to the president by the Constitution or delegated by Congress through federal law. Presidents cannot simply create new laws or override existing ones through executive orders. Second, executive orders can be challenged in federal courts if they exceed presidential authority or violate constitutional rights. The Supreme Court has struck down executive orders multiple times throughout history.

Additionally, future presidents can easily revoke or modify previous executive orders with a stroke of a pen. This means that policies implemented through executive orders may lack permanence compared to legislation passed by Congress. Congress can also pass laws that explicitly override executive orders or deny funding for their implementation.

Finally, executive orders only apply to the federal government and its employees. They cannot directly regulate private citizens, businesses, or state governments unless specifically authorized by the Constitution or federal law.

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## 2. I see the president signed an executive order implementing a regulatory freeze. What does that mean for rules already final? What does it mean for sub-regulatory actions like guidance?

A regulatory freeze like the one described in President Trump's recent executive order could be applied to regulations and to guidance documents or other sub-regulatory notices. Such freezes are fairly commonplace during presidential transitions between administrations of different political parties. In brief, the executive order, titled "Regulatory Freeze Pending Review," directs executive departments and agencies to halt the proposal or issuance of any rules until they are reviewed and approved by a department or agency head appointed or designated by the president after January 20, 2025.

- For rules that are recently finalized and effective, the executive order may still impact their implementation depending on their status and significance.
- The order directs agencies to consider suspending or extending the effective dates of recently issued rules to allow for further review by the new administration. This review ensures alignment with the administration's priorities and provides an opportunity to re-evaluate rules for their legal, economic, and policy implications.
- If deemed inconsistent with the administration's objectives, such rules could be modified, repealed, or replaced. However, exemptions may apply to rules critical to public health, safety, or national security.
- As a result, agencies and stakeholders may face delays or uncertainty regarding the enforcement of these recently finalized regulations. This

### **WASHINGTON, DC**

+1.202.828.5877

[edward.krenik@bracewell.com](mailto:edward.krenik@bracewell.com)

### **Frank V. Maisano**

Senior Principal

### **WASHINGTON, DC**

+1.202.828.5864

[frank.maisano@bracewell.com](mailto:frank.maisano@bracewell.com)

### **Paul Nathanson**

Senior Principal

### **WASHINGTON, DC**

+1.202.828.1714

[paul.nathanson@bracewell.com](mailto:paul.nathanson@bracewell.com)

### **George D. Felcyn**

Senior Director – Government Affairs

### **WASHINGTON, DC**

+1.202.828.1715

[george.felcyn@bracewell.com](mailto:george.felcyn@bracewell.com)

### **Joseph A. Brazauskas**

Senior Counsel

### **WASHINGTON, DC**

+1.202.828.1706

[joseph.brazauskas@bracewell.com](mailto:joseph.brazauskas@bracewell.com)

### **Liam P. Donovan**

Senior Political Strategist

### **WASHINGTON, DC**

+1.202.828.5847

[liam.donovan@bracewell.com](mailto:liam.donovan@bracewell.com)

### **Dylan Pasiuk**

Principal

### **WASHINGTON, DC**

+1.202.828.7620

[dylan.pasiuk@bracewell.com](mailto:dylan.pasiuk@bracewell.com)

### **Kyle J. Spencer**

Principal

### **WASHINGTON, DC**

+1.202.828.1711

[kyle.spencer@bracewell.com](mailto:kyle.spencer@bracewell.com)

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process underscores the administration's focus on recalibrating the regulatory landscape to reflect its goals while maintaining flexibility for urgent matters.

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The executive order establishes a temporary halt on the issuance, proposal, or implementation of new regulations and guidance by executive departments and agencies. It applies to rules and regulatory actions, including those defined under the Administrative Procedure Act (5 U.S.C. § 551(4)), Executive Order 12866, and Executive Order 13891, encompassing guidance documents and policy interpretations.

The order mandates that no regulatory action be proposed or finalized without review and approval by a department or agency head appointed by the president after January 20, 2025. It also calls for the withdrawal of regulations that have been submitted to the Federal Register but have not yet been published, as well as the suspension or extension of effective dates for recently issued rules to allow for additional review.

This freeze aims to ensure that pending or new regulations align with the incoming administration's priorities, allowing for comprehensive evaluation of their economic, legal, and policy implications. Exemptions may be granted for rules critical to public health, safety, or national security, as determined on a case-by-case basis.

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### **3. What did the president mean when he declared a “National Energy Emergency” and what are the practical implications?**

President Trump declared a “National Energy Emergency,” citing insufficient energy production, transportation, refining, and generation as critical threats to the US economy, national security, and foreign policy. The key elements of that declaration included: (1) an order designating vulnerabilities in energy infrastructure and supply as unusual and extraordinary threats, justifying the use of broad emergency powers; (2) a directive to agencies to expedite the leasing, permitting, siting, production, transportation, refining, and generation of energy resources, including on federal lands; and (3) invoking specific authority, like the Defense Production Act (DPA) and Section 202(c) of the Federal Power Act (FPA).

What does it all mean?

- DPA grants the federal government authority to direct industrial production to address national security needs, which now include energy infrastructure. Theoretically, it could compel companies to prioritize contracts for energy infrastructure, including pipelines, refineries, and other projects. Pursuant to DPA authority, the government might offer loans, grants, or subsidies to increase the domestic manufacturing of critical energy components like

turbines, batteries, and transformers. DPA could even be used to increase capacity for refining fossil fuels or producing biofuels.

- FPA Section 202(c) enables the secretary of energy to direct power plants or transmission systems to operate during emergencies to ensure grid reliability, potentially keeping coal, natural gas, and nuclear power plants operational by overriding environmental or regulatory restrictions.

By leveraging emergency tools like DPA and Section 202(c), the administration could expedite projects and mitigate regulatory delays, reshaping the US energy landscape. But use of the authority in this manner is still somewhat untested.

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## **4. There has been so much discussion on permitting reform, particularly in Congress relating to the National Environmental Policy Act (NEPA). What do the executive orders do to advance the permitting reform agenda? Does it obviate the need for congressional action?**

**Unleashing American Energy:** The executive order entitled “Unleashing American Energy” addresses NEPA when it calls for streamlined environmental reviews and permitting processes for energy projects. It directs federal agencies to ensure that NEPA reviews are completed within specified timeframes and limits their scope to avoid delays in energy development.

The order likely improves efficiency by reducing bureaucratic hurdles and establishing clearer timelines, but its effectiveness candidly will depend on agency implementation and potential legal challenges.

The order may well expedite permitting administratively, but it does not eliminate the need for legislation to codify broader reforms or address more complex permitting barriers, such as litigation risks or inter-agency conflicts. Without Congress acting, the order’s impact may be limited to short-term procedural improvements rather than lasting, comprehensive changes.

**National Energy Emergency:** Unlike past administrations prioritizing renewable energy (e.g., President Biden’s clean energy investments), this order emphasizes fossil fuels and traditional energy infrastructure as critical to national defense. The “National Energy Emergency” executive order’s directive to federal agencies to expedite the leasing, permitting, and siting of energy projects, including on federal lands, also could streamline the approval process for energy infrastructure. By invoking emergency authorities like DPA, the government can prioritize energy projects deemed critical to national security and provide financial incentives to accelerate production and infrastructure

development. Additionally, FPA Section 202(c) authority could be fashioned to override environmental or regulatory constraints in certain circumstances.

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## 5. What about the pause on federal spending under the Inflation Reduction Act?

Section 7 is the provision within the “Unleashing American Energy” executive order which purports to “terminate the Green New Deal.” We’re still thinking it through. But in any event, Section 7 appears to be about disbursement of federal funds or loan guarantees, and not about tax credits taken on a corporate income tax return to offset a tax liability. An argument could be made that if the Treasury is providing a direct payment to an entity that has no tax liability (like a tax-exempt entity), that could be regarded as a disbursement. This issue is not squarely addressed in the executive order.

Even with its limited scope, Section 7 of the executive order contains directives that may raise legal and contractual concerns, particularly under the Impoundment Control Act (ICA) and regarding federal contractual obligations.

Section 7(a) mandates the following:

1. **Immediate Pause of Funds:** All agencies are directed to pause disbursements of funds appropriated under the Inflation Reduction Act of 2022 (Public Law 117-169) and the Infrastructure Investment and Jobs Act (Public Law 117-58).
2. **Review Process:** Agencies must review their processes and programs for issuing grants, loans, contracts, or any financial disbursements to ensure alignment with the executive order’s policy.
3. **Reporting Requirement:** Agency heads must report their findings within 90 days to the National Economic Council (NEC) and the Office of Management and Budget (OMB), including recommendations for policy alignment.
4. **Conditional Disbursement:** Funds cannot be disbursed until the OMB Director and the Assistant to the President for Economic Policy approve them as consistent with the executive order.

Are there legal limits on this? Yes. This provision could run afoul of the Impoundment Control Act which requires congressional acquiescence for refusal to allocate appropriated funds. Also, the federal government can be subject to legal remedies associated with violation of contracting rules. If challenged, this section of the executive order might be subject to scrutiny by Congress, the GAO, inspectors general, or federal courts, as it arguably encroaches on Congress’s power of the purse and may undermine federal obligations.

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## 6. What is DOGE and its range of motion?

The executive order establishing DOGE tasks it with modernizing federal technology and enhancing governmental efficiency. The order restructures the United States Digital Service (USDS) within the Executive Office of the President, renaming it the United States DOGE Service. Additionally, a temporary organization — the US DOGE Service Temporary Organization — was created to execute the president's 18-month agenda, set to conclude on July 4, 2026. Federal agencies are also required to establish DOGE Teams to collaborate with USDS in implementing this agenda.

The structure evades lots of oversight, but not all. For example:

- **Freedom of Information Act (FOIA):** FOIA applies to federal agencies as defined in 5 U.S.C. § 551, which excludes the Executive Office of the President and its components. Since DOGE operates within the Executive Office, it is generally not subject to FOIA.
- **Administrative Procedure Act (APA):** The APA governs federal agencies' rulemaking and adjudication processes. Entities within the Executive Office of the President that solely advise and assist the President are exempt from the APA. DOGE's advisory role likely places it outside the scope of the APA.
- **Open Meetings Requirements:** The Sunshine Act mandates open meetings for federal agencies headed by a collegial body. Since DOGE is led by an administrator rather than a multimember body, this act does not apply.
- **Federal Register Publications:** Agencies must publish certain information in the Federal Register. However, components of the Executive Office of the President that solely advise and assist the President are typically exempt from these requirements. DOGE is not obligated to publish its findings or recommendations in the Federal Register.
- **Annual Federal Appropriations:** DOGE's activities depend on funding through annual appropriations. The implementation of its initiatives is subject to the availability of appropriated funds, as stated in the executive order.
- **Other Legal Limitations:** DOGE must operate within the bounds of existing laws and regulations. The executive order specifies that its provisions should not impair or affect the authority granted by law to executive departments or agencies, nor the functions of the Office of Management and Budget. Implementation is subject to the availability of appropriations and applicable law.

While DOGE may claim exemptions from FOIA or the APA, any action that directly impacts individuals or organizations outside the Executive Office could be subject to judicial review. This could expose DOGE to lawsuits that compel disclosures or constrain its activities.



Questions remain, too, related to rules governing conflicts of interest for agency officials. For example, senior officials must file public financial disclosure reports under the Ethics in Government Act (EGA) to identify potential conflicts of interest between their financial interests and official duties. Meanwhile, the Conflict of Interest Statutes (18 U.S.C. §§ 201-209) prohibit officials from participating personally and substantially in government matters affecting their financial interests and from receiving outside compensation for government-related matters. Finally, the Office of Government Ethics may require divestitures, recusals, or waivers to address conflicts of interest for senior officials.

At the same time, if DOGE were to rely on external advisors, rules requiring disclosure of relevant financial interests would apply. Further, if DOGE forms a formal advisory group, the Federal Advisory Committee Act (FACA) then applies, which similarly requires public disclosure of members' financial interests, open meetings unless exceptions apply, and publication of reports and advice in the Federal Register, among others. Informal consultations or individual advisors generally do not trigger FACA, but structured advisory groups would. In fact, on the same day as President Trump's inauguration, various public interest groups filed lawsuits that alleged DOGE's structure and operation violated FACA.

Can DOGE avoid congressional oversight?

While DOGE may have some structural features that limit direct congressional oversight, it cannot entirely avoid scrutiny due to the checks and balances inherent in US governance. Oversight mechanisms and potential limitations include budget and appropriations, congressional hearings, investigations or audits by the Government Accountability Office, or congressional legislation targeting DOGE's structure, functions, or findings.