Trump Administration's Aggressive Anti-Regulatory, Pro-Fossil Fuel Directives
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During the week of April 7, 2025, the Trump administration issued a suite of new executive orders aimed at rescinding regulations, undermining state laws and regulations, and reviving the coal industry. These orders assert sweeping authority and rely on unprecedented legal arguments that are bound to face legal challenge.

This analysis examines how the these latest presidential directives reflect the Trump administration's expansive view of executive authority, including: (1) aggressive deregulatory efforts that are premised on a contentious view of recent Supreme Court decisions and ignore the requirements of the Administrative Procedure Act (APA), (2) threats to legally challenge state energy and environmental laws and policies that the administration views as unconstitutional or unlawful, and (3) attempts to support the domestic coal industry by exempting coal plants from public health regulations and by asserting a national energy emergency. As with other executive orders, these are only directives and will require further steps by federal agencies to implement them.

Congress designed the APA to ensure that federal agencies would follow a deliberative, evidence-based, and transparent process when issuing or rescinding regulations, which is known as "notice and comment" rulemaking. Notice and comment requires agencies to seek relevant information from regulated entities, the public, and experts on the policy questions agencies must decide when adopting or rescinding rules. In addition to ensuring that rules are well designed for their purposes and cost effective to implement, notice and comment allows broad input into agency decision making and provides businesses the certainty and predictability they need to make investment decisions. The new actions outlined in the recent presidential directives are at odds with those APA-based goals, however, and threaten to undermine expectations of procedural regularity and regulatory stability on which businesses depend.

Below we briefly summarize each of the directives and explain what we will be watching as agencies take steps to implement them and as Congress, courts, states, and the private sector respond.

1. Accelerating Deregulation

After issuing its initial tranche of executive orders in January 2025, which focused on promoting domestic fossil energy production and directing the rolling back of regulations that the administration viewed as inconsistent with that objective, the Trump administration has now embarked on its deregulatory agenda, announcing plans to quickly and comprehensively roll back regulations related to climate, clean energy, and environmental justice protections. For example, on March 12, 2025, EPA announced the "biggest deregulatory action in US history," saying that it would reconsider 31 rules, including the foundation for EPA's greenhouse gas regulations, known as the endangerment finding.

The APA and Supreme Court precedent require agencies to follow a deliberative process for implementing or rescinding regulation that includes asking for input from affected stakeholders and the public, responding to those comments, and providing a reasonable justification for the final rule consistent with Congress's statutory direction and taking into account relevant technical, economic, and legal analyses in addition to public comment. When rescinding a notice and comment rule, agencies must issue a proposal, take public comment, and support the final rule with a record sufficient to enable judicial review

The president's new executive orders purport to depart from this process, however, based on an aggressive theory of presidential power and unprecedented interpretations of the APA. These directives suggest that agencies may ignore longstanding legal requirements or expand their reliance on rarely used exceptions to notice and comment. We will be tracking whether the agencies try to circumvent notice and comment requirements or take other unlawful steps, and if they do, how Congress, the states, public interest groups, and other stakeholders respond.

"Directing the Repeal of Unlawful Regulations" Memorandum and Fact Sheet

In a memorandum and accompanying fact sheet, President Trump directed agencies to "identify certain categories of unlawful and potentially unlawful regulations within 60 days and begin plans to repeal them" based on ten recent Supreme Court decisions including cases limiting agency authority and regulatory action. The memorandum orders agencies to fast track the rescission of "factually unlawful" regulation using the APA's "good cause" exemption, thereby avoiding the required public comment process.

What we're watching:

Misapplying Supreme Court Precedent

- Whether courts will accept the Trump administration's legal interpretations of recent Supreme Court cases that stretch the meaning of the Court's holdings to achieve the administration's policy goals. The cases that directly relate to climate and environmental policy include:
    - *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)[1]: President Trump's fact sheet directs agencies to "repeal any regulation that is not consonant with the 'single, best meaning' of the statute authorizing it." However, the Supreme Court recognized in *Loper* that sometimes, the best reading of a statute is that it provides agencies broad discretion: "[i]n a case involving an agency, of course, the statute's meaning may well be that the agency is authorized to exercise a degree of discretion. Congress has often enacted such statutes."[2] The premise of the decision is that courts, not agencies, are to determine the "best meaning" of the statute when reviewing a regulation. However, the Court also specifically allowed that Congress could make certain statutory delegations to agencies that still ought to invite judicial deference.[3]
    - The Trump administration also directed agencies to repeal any regulations "promulgated in reliance on the *Chevron* doctrine and that could be defended only by relying on *Chevron* deference." *Loper* does not require agencies to revisit existing regulations, nor does the opinion render existing rules "facially unlawful," as the fact sheet implies. Indeed, in *Loper*, the Court explicitly stated that prior cases under *Chevron* remain good law and are "subject to statutory stare decisis."[4] What changes post-*Loper* is that agencies may no longer identify ambiguity or silence in the statute and argue for deference to their reasonable interpretation. Instead, agencies must either point to explicit statutory language delegating a particular decision to them or

[1] See EELP, Supreme Court Overturns Chevron Doctrine, Expands Power of Judiciary (July 2024), https://eelp.law.harvard.edu/supreme-court-overturns-chevron-doctrine-expands-power-of-judiciary/.
[2] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024).
[3] *Id.* at 394 n. 5, 6.
[4] *Id.* at 412.

explain why their interpretation is the best reading of the provision and persuade the Court to agree. But that is a far cry from calling into question every *Chevron* case decided under Step 2. In addition, the administration has not articulated why it would be lawful to sidestep the APA's rulemaking requirements, which apply to rule rescissions as they do rule promulgations.

- Already the administration has used *Loper* to justify rolling back a longstanding regulatory interpretation upheld decades ago under *Chevron*, even though the Court said in *Loper* that cases decided under *Chevron* remain good law. On April 17, the administration released a proposed revision to its definition of "harm" in section 9 of the Endangered Species Act, which prohibits various actions against listed species. The proposal would remove from that definition's scope habitat modification that actually kills or injures wildlife. The Supreme Court in *Babbitt v. Sweet Home* deferred to that interpretation as reasonable. Despite *Loper*'s holding that *Chevron* cases are settled law entitled to stare decisis, the administration has said, "[w]e are undertaking this change to adhere to the single, best meaning of the ESA." The Department of the Interior is not treating this rule as exempt from notice and comment and is holding a 30-day public comment period.

- *West Virginia v. EPA*, 597 U.S. 697 (2022)[5]: The fact sheet states that "agencies must repeal any regulation promulgated in violation of the Major Questions Doctrine." However, the major questions doctrine is tool of judicial interpretation applied on a fact-specific case-by-case basis, not for agency discretion to repeal existing regulations retrospectively.
- *Michigan v. EPA*, 576 U.S. 743 (2015): While the fact sheet describes this holding as requiring agencies generally in rulemakings to consider "cost as well as the benefits" of regulations, the case focused on a narrow and unique Clean Air Act provision. Clean Air Act §112(n)(1)(A) requires EPA to determine if regulating hazardous air pollutants from power plants, beyond existing requirements applicable to those plants under the law, is "appropriate and necessary." The Court held that in making that threshold determination about the need to regulate, EPA must consider cost. The court also explained that the agency need not conduct a cost benefit analysis under this provision of the law, noting that "[i]t will be up to the Agency to decide (as always, within the limits of reasonable interpretation) how to account for cost."[6]
- *Ohio v. EPA*, 603 U.S. 279 (2024)[7]: The administration cites this case as striking down EPA's rule because "scientific and policy premises undergirding it had been shown to be wrong." But this was not a merits decision, and the Court made no such determination. Instead, the Court only temporarily paused the implementation of the rule on the emergency docket pending further litigation in the DC Circuit. The Court granted the stay on the basis that EPA allegedly failed to reasonably respond to comments that could have shifted the rule's cost-effectiveness methodology, and it did so over a strong dissent by Justice Barrett.

[5] EELP, Supreme Court Embraces the Major Questions Doctrine as Limiting but Leaving the Door Open for Power Sector GHG Regulations (July 2022), https://eelp.law.harvard.edu/supreme-court-embraces-the-major-questions-doctrine-as-limiting-but-leaving-the-door-open-for-power-sector-ghg-regulations/.
[6] *Michigan v. E.P.A.*, 576 U.S. 743, 759 (2015).
[7] EELP, The Supreme Court Pauses the Good Neighbor Plan (July 2024), https://eelp.law.harvard.edu/the-supreme-court-pauses-the-good-neighbor-plan/.

- *Sackett v. EPA*, 598 U.S. 651 (2023)[8]: While the fact sheet calls for the repeal of any regulations that are inconsistent with "a properly bounded interpretation of 'waters of the United States,'" the Biden-era EPA has already rewritten the Waters of the United States rule to comport with this ruling. However, the Trump administration has indicated its intent to revise that rule as well as any rules that refer to waters of the United States.
- *SEC v. Jarkesy*, 603 U.S. 109 (2024): While the fact sheet suggests that this ruling limits all agencies' use of internal adjudicative bodies, the text of the Court's decision does not go that far. The Court held that, "[w]hen the SEC seeks civil penalties against a defendant for securities fraud, the Seventh Amendment entitles the defendant to a jury trial." While the Court's holding may extend to other agencies, its reach will be determined by a variety of factors, including the authority delegated to the adjudicatory body, the nature of the enforcement action, and the relief involved.
- *Students for Fair Admissions v. Harvard*, 600 U.S. 181 (2023): The fact sheet incorrectly interprets *Students for Fair Admissions* to hold that all "'affirmative action' admission programs violate the Equal Protection Clause of the Fourteenth Amendment." In reality, the case held that Harvard and University of North Carolina's admissions policies violated the Equal Protection Clause of the Fourteenth Amendment; it does not create a legal hook for removing all race-conscious programs. The fact sheet orders agencies to repeal "any regulation that imposes racially discriminatory rules or preferences," which seems to include any consideration of race or ethnicity in agency decision-making (for example, the Department of Justice's dismissal of the Denka suit based on EPA's use of EJScreen to prioritize enforcement cases).

Improper and Expansive Reliance on the Good Cause Exemption

- We will also be watching how agencies use the APA's "good cause" exemption. For a rule to be exempt from notice and comment requirements under this provision, notice and comment must be "impracticable, unnecessary, or contrary to the public interest." The exception has been interpreted "narrowly," to prevent abuse and only applies when "delay would do real harm."[9] One example of how the administration is attempting to use this good cause exemption to circumvent public comment is its NEPA Interim Final Rule, in which it argues that "the need to meet the deadlines in E.O. 14154 ["Unleashing American Energy"] and to avoid agency confusion given the recent vacatur of CEQ's 2024 Rule makes proceeding through notice and comment before removal impracticable and unnecessary." The administration may assert national security risks as a rationale but would need to defend that characterization for any given rule. There is no basis in existing precedent for the broad assertion the administration appears to be making in the executive order that it is entitled to declare rules facially unlawful and summarily rescind them.

[8] EELP, Sackett v. EPA: Departure from Textualism Significantly Limiting Clean Water Protection (June 2023), https://eelp.law.harvard.edu/sackett-v-epa-departure-from-textualism-significantly-limiting-clean-water-protection/.
[9] *United States v. Dean*, 604 F.3d 1275, 1279 (11th Cir. 2010) (*quoting United States Steel Corp. v. United States Environmental Protection Agency*, 595 F.2d 207, 214 (5th Cir.1979)).

"Zero-based Regulatory Budgeting to Unleash American Energy" Executive Order

President Trump issued an executive order directing agencies to include sunset provisions in energy-related regulations and create a blanket sunset provision for new and existing rules. The order includes a list of energy and natural resources laws and directs EPA and the Army Corps of Engineers (ACE) to create their own list of rules to sunset. Each regulation identified by the agencies would no longer be effective after September 2026 unless the agency determines the rule should remain until September 2031. The order suggests that agency determinations may only consider the costs and benefits of the rules, without regard to whether the rule is statutorily required, or other relevant considerations (although like all executive orders, this one applies only to the extent "permitted by law").

The order exempts rules that the White House Office of Management and Budget (OMB) director determines have a "net deregulatory" effect and would not apply to "regulatory permitting regimes authorized by statute," which should include a wide swath of environmental and conservation rules. Adopting sunset provision for existing rules would presumably require notice and comment.

What we're watching:

- How regulated entities respond in public comments to this increased regulatory uncertainty and the potential public health and safety harms of deregulation. Paired with the 10-for-1 regulatory requirement contained in Executive Order 14192, these directives risk destabilization of federal regulation.

"Maintaining Acceptable Water Pressure in Showerheads" Executive Order

President Trump directed the Department of Energy (DOE) to rescind the Biden energy conservation regulations without notice and comment, which contravenes the APA. The order states that complying with the APA is not required because the president is directing the action. "Because I say so" is an unknown rationale in APA jurisprudence. On April 15, 2025, DOE published a final rule repealing the definition of a showerhead. Rescinding interpretive rules as opposed to legislative rules may not require notice and comment, but the administration is not claiming that this is an interpretive rule. The rule states, "there is good cause to skip notice and comment in light of the nondiscretionary nature of the agency's duty." However, what that means is unclear, and the rule does not provide any justification beyond the executive order.

What we're watching:

- How courts respond to the administration's stated intention to circumvent notice and comment where the APA would normally require it and whether courts agree with the administration's use of the good cause exemption well beyond its traditional application.

2. Attacking State Policy

Following on President Trump's energy emergency order which asserted that certain state policies threaten national security and "devastate the prosperity of not only local residents but the entire United States population," a new executive order, "Protecting American Energy from State Overreach," directs the Department of Justice (DOJ) to identify and stop unconstitutional, preempted, or unenforceable state laws and policies that burden the "identification, development, siting, production, or use of domestic energy resources." The order instructs the Attorney General to prioritize identifying policies that address climate change; environmental, social, and governance initiatives; environmental justice; greenhouse gases; and carbon taxes.

As justification, the order states, "[t]hese State laws and policies try to dictate interstate and international disputes over air, water, and natural resources; unduly discriminate against out-of-State businesses; contravene the equality of States; and retroactively impose arbitrary and excessive fines without legitimate justification." While the executive order's language sweeps in a broad set of state policies, it specifically identifies "climate superfund" laws in New York and Vermont, which allocate liability for climate-related damages, and California's greenhouse gas cap-and-trade program. It directs the Attorney General to submit a report within 60 days that recommends presidential or legislative actions to "stop the enforcement of State laws."

What we're watching:

- How the Attorney General frames legal challenges to state laws and programs given the Supreme Court's decision in *National Pork Producers Council v. Ross*, which upheld a California policy with interstate impacts because those burden on interstate commerce were not "clearly excessive in relation to putative local benefits."[10] Given this precedent, it may be difficult for the administration to persuade the Court to strike down state policies on dormant commerce clause grounds.
    - Many of the state policies identified in the executive order have been designed to withstand constitutional scrutiny and several already have been upheld by lower courts. For example, federal courts have upheld California's cap-and trade-program and Colorado's renewable energy standard.
- If the administration attempts to justify limiting state policies on the grounds that they pose a national security risk, it will be important to evaluate the basis for those arguments.
- Over 20 states currently have clean electricity laws and many other states have adopted policies to support deployment of a diverse energy mix. These state policies are integrated into state energy planning and undoing them for non-economic reasons could pose risks to grid reliability and raise costs for ratepayers. It will be important to watch how the states respond to the investigation by the Attorney General, and any actions subsequently taken to render their policies unenforceable.
- The administration's initial effort to freeze critical funding to states for clean energy and other investments has been rejected thus far by federal courts. Going forward, we will be watching what cases the DOJ files or joins to challenge state policies. We will also monitor whether this executive order emboldens private plaintiffs to challenge state policies even in the face of precedent that has largely upheld them.

3. Subsidizing the Coal Industry

Coal is a declining share of our electricity supply, currently 16 percent compared with 42 percent in 1990, in part due to the lower cost of natural gas and renewables. Trump's efforts to prop up coal plant owners date back to the earliest days of his first term. Then, market participants in the power sector opposed the plan, filing comments at FERC that explained how DOE's proposal to compensate coal favorably was unsupported by any evidence, would override state policies, and would increase prices. FERC rejected DOE's proposal on a bipartisan basis. In the face of market forces spurring its decline, the administration is again attempting to support the coal industry through a variety of policies designed to favor coal over other more competitive energy sources.

[10] *National Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023).

"Strengthening the Reliability and Security of the United States Electric Grid" Executive Order

This order notes growing demand for energy in the US, including from data centers, and states that it the policy of the US to ensure "reliability, resilience, and security" of the US electric power grid. It directs DOE to "streamline, systemize, and expedite" the DOE process under Federal Power Act Section 202(c) for determining power system emergencies and invoke its new procedures to retain generators that are needed for reliability but that are at-risk of retiring.

What we're watching:

- How stakeholders respond given that the power industry objected to a similar strategy in the first Trump term and that it could result in increased consumer electricity rates. The order also threatens to conflict with how the energy markets assess resource adequacy, secure sufficient generation, and set wholesale prices.
- We will also monitor whether the administration's actions pursuant to the order conflict with the Federal Power Act and relevant case law. For example:
    - The order directs DOE to develop its methodology and protocol without public input, but under its authority in Federal Power Act Section 202(c). Decades-old regulations outline DOE procedures for acting under Section 202(c). DOE cannot fundamentally change its procedures by adding the executive order's new methodology and protocol without conducting a public rulemaking process.
    - Section 202(c) is the only statute identified in the executive order, and it is does not authorize the actions demanded by the order. DOE typically invokes section 202(c) in response to major weather events or other short-term disturbances. However, the order envisions DOE remedying supposed deficiencies in long-term planning processes regulated by states and the Federal Energy Regulatory Commission. Neither the text of 202(c) nor DOE's regulations allow DOE to override interstate markets and industry practices as the executive order suggests.
    - Many observers are likely to argue that the administration's new plan violates the major questions doctrine, a judicial principle invoked by the Supreme Court in *West Virginia v. EPA,* to strike down what the Court concluded was a novel and far-reaching administrative action with transformative impacts not specifically authorized by law. The Trump administration appears to be trying to do just that here under the Federal Power Act—using "oblique or elliptical language" to authorize an agency to make a "radical or fundamental change" to a statutory scheme.

"Regulatory Relief for Certain Stationary Sources to Promote American Energy" Proclamation

This proclamation relies on Clean Air Act Section 112(i)(4) to exempt 47 companies operating 68 coal-fired power plants from complying by 2027 with the updated Mercury and Air Toxics (MATS) rule adopted by the Biden administration, which is designed to reduce emissions of mercury, a powerful neurotoxin, as well as other pollutants. The proclamation states that "technology does not exist in a commercially viable form sufficient" to comply by July 8, 2027. However, in the final rule EPA explained that "the vast majority of coal-fired EGUs are reporting [...] emissions well below the revised limit." EPA has not articulated why the 90 units to which it is offering a compliance extension need additional time, nor explained the public health risks that could result if plants emit above the emission limit. The proclamation states that it is "in the national security interests" because of the risk of electricity shortages and increased reliance on foreign energy sources but does not explain how the extension will address such risks.

What we're watching:

- Stakeholders' response to this exemption given that under the Clean Air Act Section 112(i)(4) exemptions must demonstrate both lack of available technology and national security concerns. Use of this provision is rare: we were unable to find any past examples. The

president may exempt a source from compliance under any Section 112 program for "not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so." It will be difficult to argue that there is a lack of available technology given the high level of industry compliance.

- It will be important to assess the potential adverse public health impacts if plants emit mercury and other toxics above the public health limits.

"Reinvigorating America's Beautiful Clean Coal Industry" Executive Order

This executive order directs several agencies to use a range of authorities to support coal production and coal electricity generation. It defines coal as a critical mineral, despite long standing categorization of coal as a fuel mineral, not a critical mineral, and directs DOE to determine if coal used in steel production is a critical mineral. The executive order also directs agencies to identify coal resources on public lands and its impact on electricity costs and reliability and directs land management agencies to prioritize coal leasing as the "primary land use" for lands with coal resources.

The order ends the Obama-era public lands coal leasing moratorium and seeks to expedite permitting for coal leasing. Additionally, it directs agency heads to revise or rescind any policies that create barriers to coal development and directs agencies to support investment in coal production and electricity generation, including financing, export opportunities, coal technology development and deployment, and using coal for data center power.

What we're watching:

- How the market responds given the increase in oil and gas production and decline in coal production already underway. This order, when combined with others favoring coal, highlights a tension between bolstering coal and opposing renewable energy sources on the one hand, while raising concerns about a national energy emergency and the need to keep energy costs low for consumers on the other.
- Whether courts can be persuaded to uphold the classification of coal as a critical mineral despite its usual classification as a fuel mineral.[11]

[11] The Energy Act of 2020, 30 U.S.C. 1606 (a)(3), defines a critical mineral as "any mineral, element, substance, or material designated as critical by the Secretary under subsection (c)." 1606(a)(4) provides exclusions to this definition, starting that "The term "critical mineral" does not include- (i) fuel minerals." Thus, while the Secretary of the Interior has some discretion to determine critical minerals, "fuel minerals" are statutorily exempted. Coal has historically been considered a fuel mineral, including in statute. For example, in 30 U.S.C. § 21a, the term minerals is defined to "include all minerals and mineral fuels including oil, gas, coal, oil shale and uranium." See also the Department of the Interior's US Geological Survey 2022 list of critical minerals, explaining that it exempted uranium as a fuel mineral: "The Energy Act excludes "fuel minerals" from the definition of critical minerals, and uranium is used as a fuel: While uranium has important non-fuel uses, it is a major fuel commodity in the United States." USGS, 2022 Final List of Critical Minerals, https://www.federalregister.gov/documents/2022/02/24/2022-04027/2022-final-list-of-critical-minerals.