



President Trump Directs Energy Agencies to Establish Sunset Dates for Energy-Related Regulations

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On April 9, 2025, President Trump issued an executive order (EO)¹ directing several federal agencies and subagencies that regulate energy, environmental, and conservation matters,² including the Federal Energy Regulatory Commission (FERC) and the Department of Energy (DOE), to establish conditional sunset dates for “regulations governing energy production.” The stated objective of the EO is to require agencies to periodically reexamine their regulations to ensure that they continue to serve the public good. For FERC, the order covers regulations promulgated under the Federal Power Act (FPA), the Natural Gas Act (NGA) and the Powerplant and Industrial Fuel Use Act (FUA)³, as amended, while DOE must consider regulations promulgated under the Atomic Energy Act (AEA), the National Appliance Energy Conservation Act, the Energy Policy Act of 1992 (EPAct 1992), the Energy Policy Act of 2005 (EPAct 2005) and the Energy Independence and Security Act of 2007 (EISA), as amended (collectively the Covered Regulations).⁴ To the extent the DOE has been directed to promulgate regulations under various sections of the NGA, FPA and FUA, and FERC has been directed to promulgate regulations specific to the statutes attributed to the DOE in the EO, the EO is silent. The EO expressly does not apply to those “regulatory permitting regimes authorized by statute.”⁵

Under the EO, agencies will need to insert a “Conditional Sunset Date” in each of their Covered Regulations. The Conditional Sunset Date must be within one year of the effective date of each agencies’ sunset rule, which must be effective on or before September 30, 2025. Following the Conditional Sunset Date the Covered Regulation will cease to be effective for

all purposes and will no longer be subject to enforcement. Newly issued Covered Regulations are directed to include a Conditional Sunset Date of not more than five years into the future. The EO also provides that agencies must offer the public the opportunity to comment on the costs and benefits of each Covered Regulation prior to its Conditional Sunset Date and may extend the Conditional Sunset Dates on a case-by-case basis as appropriate. An agency may extend an existing or future Covered Regulation's sunset date as many times as it deems appropriate, provided that the new sunset date is not more than five years into the future.

The EO raises several legal, logistical and procedural questions, and its implementation may result in challenges before the federal courts.

Potential Impact on FERC

The EO may be the first executive order ever to specifically direct FERC to take any executive action. As an independent regulatory agency, FERC traditionally has viewed its compliance with executive orders to be voluntary.⁶ Even if FERC determines that it is required to comply with the EO, the EO's effectiveness may be muted by FERC's structure, which was established by Congress in the Department of Energy Organization Act of 1977 (DOE Organization Act). The DOE Organization Act mandates that FERC subject certain actions within its statutory control to a vote of its members, which currently consist of five commissioners. These actions include the promulgation of, or amendments to, regulations enforced by FERC under the FPA and NGA.⁷

At present, FERC is comprised of three Democratic and two Republican Commissioners, meaning that at least one of the Democratic commissioners must join the agency's two Republicans to approve regulatory changes. While the President has sought to fire Democratic commissioners from other regulatory agencies without cause—an action that is currently being contested in the courts—the firing of all three Democratic commissioners would paralyze the agency unless and until a new Republican Commissioner could be appointed and confirmed by the Senate given that FERC requires at least three Commissioners for a quorum.⁸ Another unknown factor is whether the plain language of the statutes cited by the EO permit the enactment of sunset provisions for implementing regulations.

Regardless of whether FERC is required to implement the EO, the EO's impact on FERC may still be limited. Interpreted narrowly, the EO applies only to regulations governing "energy production." Energy production typically sits outside of FERC's statutory purview. The NGA specifically precludes FERC from asserting jurisdiction over the production of natural gas.² Similarly, the FPA applies to the transmission or sale of electric energy in interstate commerce but withholds jurisdiction "over facilities used for the generation of electric energy."¹⁰ With respect to the FUA, FERC only has one regulation within its purview, which was enacted in 1979, and concerns power plant design capacity rather than "energy production."¹¹

However, if the EO is not strictly limited to regulations governing energy production, the EO could apply to nearly all of FERC's regulations implemented under the FPA and NGA, potentially excluding regulations over "permitting" of natural gas pipeline and liquefied natural gas terminal facilities implemented under NGA sections 3 and 7 and over siting of electric transmission facilities pursuant to Section 216 of the FPA. In this circumstance, FERC's resources could be severely strained as it reviews each regulation within its jurisdiction and sets a process for amending their texts. The EO's stipulation that there be a public notice and comment period on the initial conditional sunset date and general efficacy of each Covered Regulation would make it difficult for FERC to attempt to circumvent statutory notice and comment requirements set forth in the Administrative Procedures Act (APA) as a way of fast-tracking regulatory changes.

Potential Impact on DOE and other Agencies

The EO may have a greater impact on regulations promulgated by the DOE and other cabinet-level agencies and subagencies subject to the EO, to the extent they relate more directly to energy production.¹² For example, it is unclear whether regulations implementing the AEA that regulate the production of nuclear fuel would be required to sunset within one year. Moreover, some of the statutes referenced in the EO, such as EPL 1992, EPL 2005, and EISA were multifaceted pieces of legislation involving numerous legislative compromises and directed both energy production and energy conservation measures to be implemented by various federal agencies, and to some extent amended other statutes such as the NGA and FPA. It is questionable whether the EO undermines legislative intent by seeking to remove regulatory oversight for some aspects of these laws, but not others.

Covered Regulations with a “Net Deregulatory Effect”

Section 4(c) of the EO provides that the director of the Office of Management and Budget (OMB) may exempt any new Covered Regulation from the five-year sunset requirement, thereby allowing it to stand indefinitely, if it is determined to have “a net deregulatory effect.”¹³ While it is not clear what would constitute a net deregulatory effect, given that many of FERC’s regulations issued under the NGA and FPA over the past two and a half decades were aimed at establishing a more competitive, deregulated framework for the natural gas, electric power and transmission industry, it is possible that regulations in furtherance of this framework could qualify for this exemption.

Allocation of Agency Resources

The EO is one of several executive actions that appears focused on expanding energy production. Also, a Presidential Memorandum issued on April 9, 2025, to the heads of executive agencies directed them to identify and make plans to repeal regulations that are deemed to be “unlawful” by the Attorney General under various Supreme Court decisions concerning the regulatory powers of various executive agencies.¹⁴ The memorandum directs them to finalize the repeal of regulations without notice and comment where doing so is consistent with the APA’s “good cause” exception.¹⁵ The repeal of various regulations without notice and comment is expected to result in administrative litigation.

The Akin energy regulatory team will continue to monitor these executive orders and other executive actions impacting the energy industry.

¹ Executive Order, Zero-Based Regulatory Budgeting to Unleash American Energy (Apr. 9, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/zero-based-regulatory-budgeting-to-unleash-american-energy/>.

² The full list of agencies and agency subcomponents affected by this EO includes the Environmental Protection Agency (EPA); the Department of Energy (DOE); the Federal Energy Regulatory Commission (FERC); the Nuclear Regulatory Commission (NRC); the Office of Surface Mining Reclamation and Enforcement (OSMRE), the Bureau of Land Management (BLM), the Bureau of Ocean Energy Management (BOEM), the Bureau of Safety and Environmental Enforcement (BSEE), and the United States Fish and Wildlife Service

(FWS), all within the Department of the Interior; and the United States Army Corps of Engineers (ACE), within the United States Army.

³ The Powerplant and Industrial Fuel Use Act was enacted during the fuel shortages of the 1970s in order to prevent the use of natural gas and fuel oil for industrial purposes, such as power plants.

⁴ EO Section 3(b).

⁵ EO Section 5(c).

⁶ For example, FERC voluntarily complied with executive orders issued by President Trump during his first term in office, such as Executive Order 13783, Promoting Energy Independence and Economic Growth. *See e.g.*, Review of Federal Energy Regulatory Commission Agency Actions Pursuant to Executive Order 13783, Promoting Energy Independence and Economic Growth, *available at* <https://www.ferc.gov/sites/default/files/2020-05/EO-13783.pdf>.

⁷ Department of Energy Organization Act, Pub. L. No. 95-91, §§ 401(e) and 402(h).

⁸ *Id.* § 401(e).

⁹ 15 U.S.C. § 717(b).

¹⁰ 16 U.S.C. § 824(b)(1).

¹¹ Section 103(a)(18)(D) of the FUA, Pub. L. No. 95-620, required FERC to prescribe by February 9, 1979, rules according to which a powerplant's design capacity could be determined. The regulation is located at 18 C.F.R. § 287.101.

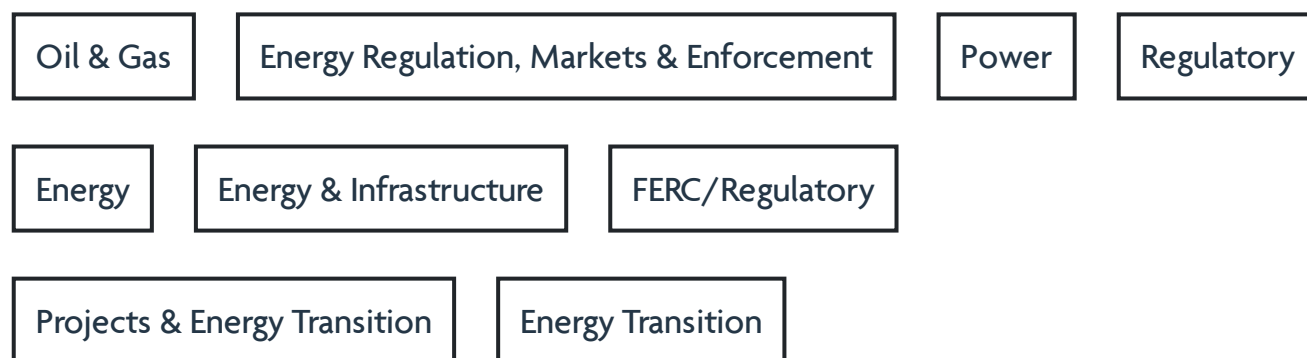
¹² The EO is unique in how it directs subcomponents of agencies, such as those within the Department of the Interior, to take specific actions, as opposed to directed the cabinet-level Secretary to direct such subagencies to take action. While removing direction to various Cabinet-level secretaries, the EO elevates the new Department of Government Efficiency (DOGE), a non-Cabinet agency, to oversee the deregulatory efforts.

13 EO, Section 4(c).

14 Presidential Memoranda, Directing the Repeal of Unlawful Regulations (Apr. 9, 2025), available at <https://www.whitehouse.gov/presidential-actions/2025/04/directing-the-repeal-of-unlawful-regulations/>.

15 Another executive order issued on April 9, 2025, Maintaining Acceptable Water Pressure in Showerheads, directs the Secretary of Energy to repeal of specific regulations implemented by DOE without notice and comment rulemaking, available at <https://www.whitehouse.gov/presidential-actions/2025/04/maintaining-acceptable-water-pressure-in-showerheads/>.

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