ENERGY MARKETERS OF AMERICA EMA

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EMA Regulatory Alert: Trump 2.0 & the Liquid Fuels Industry

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President Trump signed numerous Executive Orders (EOs) on and after January 20, outlining his new administration's energy and environmental policies affecting liquid fuel marketers. From efforts to halt de facto EV mandates to unleashing energy resources, the EOs aim to promote energy independence, job creation, and economic growth across the nation. Let's explore some of the most salient aspects of the coming regulatory changes.

Executive Order Summary

The focus of many of the EOs is to reverse policies put in place by the Biden administration and promote domestic oil and gas production. Some of the EOs include:

- Halt all federal regulations promulgated in the waning days of the Biden administration from going into effect until review by political appointees.
- Freeze virtually all regulatory efforts that would lead to the promulgation of a rule unless approved by political appointees.
- Begin the repeal of the Biden administration's regulations on vehicle tailpipe emissions that act as a de facto EV mandate.
- Pause federal funds disbursed through the Inflation Reduction Act of 2022, including EV charging funds.
- Review all federal regulations that impose an "undue burden" on the development or use of energy resources.
- Rescind rulemaking authority of the Council of Environmental Quality to reform environmental review laws and streamline permitting.
- Carry out a top-to-bottom review of the U.S. manufacturing base to assess whether national-security related tariffs are needed.
- Renegotiate the USMCA with Canada and Mexico and use tariffs – possibly at a 25 percent rate starting February 1-- to incentivize movement on negotiation.

The Overall Regulatory Landscape

On day one, the president sent out waves of deregulatory signals. Among the most important ones, included a regulatory freeze of agency actions. The scope of the regulatory freeze is extensive. The executive mandate adopts the broad definition of "rule" as provided in the Administrative Procedure Act (APA). Furthermore, the freeze applies not only to APA rules but also to any "regulatory action" as defined by Executive Order 12866 and any "guidance document" as defined by Executive Order 13891. Accordingly, the freeze encompasses virtually all substantive agency actions leading to the promulgation of a final rule, including interpretative guidance, notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking. The freeze has the following requirements:

1. Rule Approval Before Issuance: No new rules can be proposed, finalized, or sent to the Office of the Federal Register (OFR) until reviewed and approved by a department or agency head appointed by the President, with exceptions for emergencies or urgent circumstances as determined by the OMB.
2. Withdrawal of Unpublished Rules: Any rules sent to the OFR but not yet published in the Federal Register must be immediately withdrawn for review and approval.
3. Postponement of Effective Dates Until Review: Agencies should consider postponing the effective dates of published or issued rules for 60 days to review questions of fact, law, or policy. Where appropriate, they should open a comment period and reevaluate the regulatory effort. If necessary for continued review, agencies may further delay the effective dates beyond 60 days or publish proposed rules to extend the delay.
4. OMB Consultation for Substantial Rules: For rules that raise substantial questions, agencies should consult with the OMB Director before proceeding.

Unlike the first term, during which the administration relied on an ambitious but unrealistic 10-to-1 regulatory/deregulatory ratio, the clear drivers of the deregulatory agenda will now be centralized in key advisory positions, including the Department of Government Efficiency (DOGE) and the Office of Management and Budget (OMB). DOGE's stated goal is to save taxpayers $500 billion per year by recommending the elimination of those regulations that were promulgated without specific congressional authorization and would not pass muster under West Virginia vs EPA (Major Questions doctrine) or Loper Bright vs Raimondo (Chevron deference overturn). The OMB, on the other hand, will scrutinize the cost-effectiveness and cost-benefit ratios of all proposed and final regulations under review through its Office of Information and Regulatory Affairs.

What about EPA? With Trump 2.0 signaling it intends to be more aggressive in targeting the "deep state" in Washington, D.C., many EPA employees are expected to leave, through retirement, resignation, or termination. Any significant exodus of EPA staff will affect the Agency's day-to-day activities and will drain significant scientific and institutional know-how.

<u>CAFE, Tailpipe Rules, and the Regulatory Future of EVs</u>

The most recent corporate average fuel economy (CAFE) and greenhouse gas tailpipe regulations issued by the Biden EPA set very stringent tailpipe emissions which were de facto EV mandates. President Trump said that his administration will roll back these regulations but implementing such changes will take time. During the first Trump Administration, it took EPA more than three years to change the Obama-era CAFE provisions, and then the Biden administration took another three years to change them again.

Additionally, the Trump administration is expected to start clawing back the authority given to California under the Clean Air Act to set its own vehicle emissions standards. The Biden EPA last month approved California's Advanced Clean Car II Rule, which bans the sale of new internal combustion engine vehicles in California in 2035. The Clean Air Act also permits states to opt into California's vehicle emissions regulatory program. The EOs provide clear signals that this will be a top-priority for the Trump 2.0 administration.

Beyond eliminating EV mandates and associated state emissions waivers, President Trump has signaled that funding for EV infrastructure can be at risk. The administration halted funds for EV charging. Led by OMB, policy change recommendations are due within 90 days. While the funds allocated by the National Electric Vehicle Infrastructure Formula Program may be challenging to rescind, the Trump 2.0 administration could target discretionary funds under the Charging and Fueling Infrastructure Discretionary Grant Program.

Energy Emergency & Development

President Trump declared a national energy emergency by EO and directed federal agencies to use federal eminent domain power under the Defense Production Act and other emergency powers to "facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources." "Energy resources" are defined as "crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals." Notably for marketers, the EO directs EPA to collaborate with the Secretary of Energy to address the need for emergency fuel waivers to allow the year-round sale of E15 gasoline to prevent insufficient gasoline supply.

Additionally, the Trump 2.0 administration called for an expedited permitting process, starting by rescinding the Council of Environmental Quality regulations under the National Environmental Policy Act.

Tariffs

The Trump 2.0 administration also intends to use tariffs, particularly against China. The president's stated goal is to use tariffs as a tool to achieve a more balanced reciprocal trade relationship for the U.S., including with the European Union, rather than to raise revenue. President Trump, however, wants to create the External Revenue Service to collect revenues from foreign sources. There appears to be a line-in-the-sand for anything deemed to be a national security risk, with reliance on foreign supply chains being an unacceptable vulnerability. The early targets appear to be access to minerals necessary for battery production and reliable supplies of semiconductors.

Paris Climate Agreement

The Trump administration has again withdrawn the U.S. from the Paris Climate Agreement. It is expected that many large, global corporations will keep their stated emission targets, as many other countries will stay in the Paris accord.