CLIENT ALERTS & INSIGHTS

President Trump's Executive Order "Unleashing American Energy" Takes Aim at Previous Administration's Electric Vehicle and Emissions Policies

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Within hours of his inauguration, President Donald Trump signed an Executive Order titled "Unleashing American Energy." This Executive Order contained several provisions that significantly shift current policies and regulations that impact the electric vehicle ("EV") marketplace and emissions regulations more generally. Many of the proposed actions under the Executive Order will face legal challenges prior to enactment. Nonetheless, the Executive Order provides significant insight as to the incoming administration's policy positions regarding EV and emissions regulation. Below is an analysis of four key provisions within this Executive Order that will affect the transportation and logistics industry:

1. **Rescinding Waivers for California's Zero-Emission Regulations**

The most consequential action to the transportation and logistics industry contained in the Executive Order is a directive for the EPA to revoke certain federal waivers that previously allowed California to enact and enforce stricter greenhouse gas ("GHG") emissions regulations than what is currently provided under federal law. These waivers, granted under the Clean Air Act, enabled California to set its own standards to reduce GHG emissions, many of which are specifically aimed at the transportation and logistics industry. Many other states have also voluntarily adopted some or all of California's more stringent GHG emissions regulations. Specifically, this includes California's Advanced Clean Cars II program that contains a 100% new vehicle zero-emission mandate by 2035 and Advanced Clean Truck regulations that require manufacturers of medium and heavy-duty vehicles to sell zero or near-zero emission vehicles as an increasing percentage of their annual sales, which significantly reduces emissions emanating from motor vehicles.[1] In addition to ordering the EPA to rescind existing waivers, the Executive Order also seeks to create a federal vehicle emissions standard that will likely be less stringent in reducing GHG emissions than the current California regulations authorized by the waivers. Pursuant to the Executive Order, the new federal standard will also prevent individual states from implementing stricter regulations on vehicle and GHG emissions than the federal standard.

The automotive marketplace would be significantly impacted if the rescission of such waivers and the enactment of more lenient federal emission standards were to move forward. Vehicle manufacturers that had previously tailored and planned their vehicle offerings to comply with current and upcoming California emissions regulations may shift their strategies to align with the less stringent uniform federal standard. This could lead to a reduced demand for electric vehicles, as the

gas and diesel fuel-powered vehicles will no longer be under as significant of a threat as the current and upcoming California zero-emission vehicle regulations presented. Finally, the rescission of these zero-emission vehicle regulations will significantly reduce a California motor carrier's incentive to buy an electric vehicle in the near term.

Any attempt to rescind California's waiver will undoubtedly raise questions about federal preemption under the federal Clean Air Act. Therefore, we anticipate that California and many other states that have adopted California's standards will challenge such rescission in court, arguing that states have the right to enforce stricter environmental protections. We further anticipate that these legal challenges will particularly focus on whether the EPA has the authority to revoke previously granted waivers under the Administrative Procedure Act or if congressional action is required to amend the Clean Air Act to allow for previously granted waivers to be rescinded.

2. Halting Disbursements for EV Infrastructure Funding

The Executive Order suspends the distribution of unspent federal funds that were designated for EV charging infrastructure expansion. Under the Bipartisan Infrastructure Law, $5 billion was previously allocated for the purposes of supporting a nationwide EV charging network. This suspension places those funds under review, potentially leading to budgetary reallocation.

The disbursements authorized under the Infrastructure Investment and Jobs Act, better known as the Bipartisan Infrastructure Law, were meant to accelerate demand for EVs, as a lack of EV charging infrastructure is seen as one of the main impediments to more widespread adoption of electric vehicles by the public. The halting of these disbursements for charging infrastructure could potentially slow the transition to EVs, particularly in areas where private investment for EV charging infrastructure is unlikely. In turn, this could significantly impact the adoption of heavy-duty EV trucks for long-haul transportation.

The halting of these disbursements may also lead to additional knock-on litigation, as several states and private entities have likely already entered into agreements to develop EV infrastructure in anticipation of receiving such previously granted federal EV infrastructure funds. The abrupt suspension could potentially result in breach-of-contract claims between such parties. Further, states may seek to challenge whether the current administration has the authority to halt already granted funds under various legal theories.

3. Directing the EPA to Revisit Its Endangerment Finding on Climate Change

The executive order directs the EPA to reassess the "legality and continuing applicability" of its 2009 Endangerment Finding, which classifies GHGs as pollutants that endanger public health and welfare. This finding has been the legal and public policy foundation for several federal emissions regulations, including laws placing limits on vehicle emissions. If the EPA were to weaken or reverse this finding, it could not only impact vehicle emissions regulations, but it could also reshape U.S. federal environmental policy as a whole.

Any change or reversal of the 2009 Endangerment Finding will impact the transportation and logistics industry. Automobile manufacturers may react to the elimination or weakening of a federal mandate regarding GHGs by themselves eliminating, delaying, or scaling back their current and future EV production, as well as any investments in emissions-reducing technologies.

With that said, such an event happening in the immediate or near future is unlikely, as review of the 2009 Endangerment Finding requires significant scientific justification and a prolonged rulemaking process. Further, it is likely that many environmental groups and some states would challenge any decision or attempt to eliminate or weaken the 2009 Endangerment Finding.

4. Freezing Funds from the Inflation Reduction Act (IRA) Related to EV Manufacturing

The executive order halts the disbursement of unspent funds from the Inflation Reduction Act (IRA), which provided financial incentives for various clean energy initiatives, including the manufacturing of EVs, lithium battery production, and various emissions reduction programs. This action directly impacts various tax credits and grants that were designed for the purpose of accelerating the EV transition in the transportation sector.

The mere threat of halting these funds will likely disrupt some private sector investments within the EV industry. Investors and companies relying on IRA funding for EV and lithium battery production now face financial uncertainty via the threat to these funds.

We anticipate several challenges to halting this funding, as well as the awarding of tax credits and grants. First, many IRA-associated projects involve legislatively approved tax credits, meaning that executive attempts to suspend such credits will likely be challenged on the grounds of executive overreach. Second, many investments are tied to larger-scale initiatives under the IRA, not just those advancing EV adoption. For example, some projects implicate national security interests related to maintaining domestic sourcing of certain EV components and materials. Finally, many of the IRA projects are in different stages of implementation, and the potential elimination of such projects that are anticipated to create a significant number of jobs may be seen as politically unpopular.

Conclusion

The provisions contained within the “Unleashing American Energy” Executive Order represent a significant shift in federal policy regarding EV infrastructure and GHG emissions regulations. While these actions certainly align with the Trump Administration’s focus on energy independence, individual choice, and deregulation, they also introduce various uncertainties regarding the extent to which and how soon such actions will be enacted. Transportation and logistics industry stakeholders who wish to make sound business and operational decisions must closely monitor these actions above, as well as the various anticipated legal challenges. Stakeholders should brace themselves to adapt to what will likely be a highly fluid regulatory landscape for EVs and GHG emissions for the foreseeable future.

Benesch's Transportation & Logistics' Sustainable Transportation Regulatory Environmental Emissions Team (the "STREET") is available to assist with developing compliant operations that satisfy any of Federal and State requirements within the transportation and logistics industry and beyond.

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[1] CARB rescinded the EPA waiver requests for Advanced Clean Fleets and In-Use Locomotive regulations. All regulatory requirements of these regulations that require an EPA Waiver to be enforceable are no longer in effect.