

2025 LAW AND POLICY

The Initiative

The Blueprint 2025 Initiative was started in 2016 by Norman Anderson, a noted infrastructure commentator who in his many publications and lectures espoused the public benefits and practical necessity of cutting edge infrastructure broadly defined. His hope –by 2025 to restore the U.S. to its rightful position as the country with the best, most efficient and most advanced infrastructure. He saw the then incoming Administration as an opportunity to install strong executive leadership, bring in the private sector and private capital, make government a faster and more efficient promoter of critical projects and objectives and keep the U.S. at the forefront of innovation and technology.

Norman died too soon and inertia sometimes overcame progress, so we were pleased to see, at the beginning of the current Administration, what appeared to be an exquisitely thought-out plan to use Executive Orders and an enhanced OMB review process to put the Executive in charge of the Executive Branch, speed up progress and overcome inertia.

Unfortunately, as the attached article and its predecessors note, inertia is still with us and attention is needed. Please weigh in if you can and keep in touch.

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The Deep State Struggle—Is there still hope?

Following recent Supreme Court decisions that relaxed procedural strictures and reined in federal agencies' power to interpret the limits of their own authority, the President, through a series of executive orders is trying to reassert control over the administrative agencies. These orders add a new level of OMB review designed to keep regulations and interpretations consistent with the law and with Administration policy. Earlier notes — *DOGE REDUX* and *Back to the Future* — argued this could finally give the President real control over the agencies in the Executive Branch.

EPA's repeal of the greenhouse gas related Endangerment Finding showed that the system can work. The efficient rulemaking proceeding shifted a primary driving force for EPA actions away from the global issue of climate change and toward concentration on issues that more directly affect the health and safety of Americans.

The pending MTVLO rulemaking is a critical early test of whether that successful experience can be duplicated on a broader basis. To date, the prognosis is not encouraging.

The proposed *new* rule would, for the first time, extend stringent control requirements on terminals beyond territorial limits at a cost of some hundreds of millions of dollars per year. To avoid the new OIRA review procedures, EPA has taken the position that this is not a change in existing law, that the requirements have always applied extraterritorially and, accordingly, the cost of the new proposed regulation is minimal and no OIRA review is required.

So far, this evasive action has been successful. The position that the rules have always been applied extraterritorially has not been addressed in an OIRA review and a regulation which will cost some hundred thousands of dollars for every ton of HAPS reduced and will create safety issues which could result in negative net health and safety benefits is quietly proceeding without OIRA review of its true cost or foundational premises.

The point is that if the agencies can easily fool OIRA regarding cost impacts, the carefully crafted enhanced OIRA review called for by the Executive Orders can be evaded and the Administrative State will prevail.

The past decade's experience shows us that the extension of Clean Air Act applicability which these rules might quietly accomplish will not only radically increase costs without corresponding benefits. It will add some years to the timeline for processing new deepwater port licenses—a result which clearly frustrates the Administration's clearly stated objective of increasing U.S. oil imports and giving the U.S. more control over global energy markets.

This is exactly the kind of rule the new review process was built to catch. It didn't. because

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agency staff at the regional level appears to have controlled the inputs — the cost estimates, the feasibility analysis, the threshold determinations and steered a defective rule around the check that was designed to stop it.

Thus, the new review architecture seems sound, but it still can be defeated by managing the information it runs on.

A control system that can be steered around by the people it's meant to control cannot really be relied on. The regulated community needs to carefully scrutinize Unified Agendas and contest classifications which, like this one, are based on mistaken premises and the Whitehouse/OIRA and embedded agency reviewers should be similarly vigilant and consider IT assistance in that regard.

More complete analyses — including concrete reform recommendations to give the program teeth — are available at 2025lawandpolicy.com.

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