



Obama raises eyebrows with executive order revising authority to nationalize resources for defense

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President Obama's signature on an executive order that updates presidential authority to take control over national defense resources in time of emergency has legal minds arguing over whether the White House is trying to expand power or merely organize rules 18 years in the making.

The executive order, signed late Friday, revokes an earlier order put in place by President Bill Clinton in 1994 and says any other previously issued orders or rulings by previous presidents shall remain in effect unless they are inconsistent with the new order.

The purpose of the order, according to its contents, is to make sure the U.S. is prepared to mobilize technological and industrial resources "capable of meeting national defense requirements" and ensure "technological superiority of its national defense equipment in peacetime and in times of national emergency."

It orders Cabinet agencies to determine military and civilian staffing and evaluate access to resources like suppliers, materials, skilled labor and professional and technical personnel. It also is intended to ensure the U.S. government is prepared "in the event of a potential threat to the security of the United States."

The executive order gives the homeland security secretary authority to issue guidance to other department heads to establish and activate a National Defense Executive Reserve (NDER) composed of experts in the private and public sector -- though not full-time federal employees -- to fill executive positions in the federal government in the event of a national defense emergency.

That includes employing consultants or other experts without compensation. The labor secretary can also begin training workers to help address national defense requirements.

The order scopes out the different roles of the National Security Council, Homeland Security Council and National Economic Council in advising the president -- giving the secretary of homeland security authority to provide for the central coordination of the plans and programs delegated under the order.

It also gives authority to the secretary of Commerce to determine how to get the industrial base to support the national defense and meet defense program needs. The Agriculture Department will take care of food resources while the Defense Department will handle water resources in addition to its military role. The heads of the Energy, Health and Human Services and Transportation departments also are responsible for their jurisdictions.

The order notes that unless determined otherwise by the president or his national security adviser, the authority "may be used only to support programs that have been determined in writing as necessary or appropriate to promote the national defense."

This order came on the heels of another presidential order a few days prior that reiterated the United States' "national emergency" stance toward Iran -- a rather routine measure that has been repeated every year since 1995 but that might have caused some confusion.

Several legal eagle bloggers say there's nothing to fear.

"There is enough that Obama actually does wrong without creating claims which do not hold up to scrutiny," wrote William Jacobson, associate clinical professor of law at Cornell Law School and blogger for the Legal Insurrection blog.

"I'm not ruling out the possibility that this is more than it seems, but unless and until someone does more than merely state that martial law is coming, I'll consider this to be routine," he wrote.

Ed Morrissey of HotAir blog explained his take on the document dump that occurred late Friday night before St. Patrick's Day.

"Why the update? If one takes a look at EO 12919 (the previous executive order), the big change is in the Cabinet itself. In 1994, we didn't have a Department of Homeland Security, for instance, and some of these functions would naturally fall to DHS," he wrote. "Otherwise, there aren't a lot of changes between the two EOs, which looks mainly like boilerplate. In fact, that's almost entirely what it is."

But as gas prices rise and fears are raised that the U.S. is heading down a warpath with Iran, not everyone is convinced the new language isn't part of the administration's plan to gear up for a possible power grab.

"I am not an alarmist, but the idea of the Obama regime having total control over anything is disturbing. No, it isn't disturbing, it is totally, freaking scary," wrote Judson Phillips, founder of the Tea Party Nation and a former assistant district attorney in Shelby County, Tenn.

"The problem is there is an appearance of an expansion here," Lt. Col. Tony Shaffer, a senior fellow at the Center for Advanced Defense Studies, told Fox News. "And I think this is where the White House owes Congress and the American people a bit more of

an explanation of, why now?"

On Monday, **White House spokesman Jay Carney said the order was nothing out of the ordinary.**

"I think it was a fairly standard and routine piece of business," he told reporters, dismissing suggestions that there's a relationship between revising the existing executive order and plans for dealing with Iran.

"I cannot explain that reaction to it," Carney said. He added that approach to Iran right now is a diplomatic one because "we have the time and space to do that."

One person steeped in the legal basis said the document is pretty standard fare -- presidents have been preparing for the possibility of a national emergency since before World War II, when the government ordered the private sector to shift from making cars and refrigerators to making airplanes, boats and other items.



"What he is saying is this one is a new one, this incorporates all the old provisions and this is the one that will control," said Paul Rothstein, a professor at Georgetown Law School. "And that's not unusual in this kind of implementing presidential orders, and I emphasize that is implementing powers that Congress over the years has given the president and have been used repeatedly."

But suspicions about the Obama administration spilled over as a result of the Friday document dump, lighting up the blogosphere with phrases like "terrifying" and "martial law" and pointing out potentially big changes in the order.

"According to the new law, yes, the president can direct private companies, private elements of our infrastructure to give things up or do things without regard to due process," Shaeffer said.

Rothstein, however, said presidents have to prepare for emergencies -- and even peacetime contingencies. He added that the powers are ceded to presidents over the years by Congress and closely monitored by the courts.

"This act is employed all the time, usually when foreign powers like China or Dubai seem to be gaining too much economic control in this country by ownership of things. Those things have to be approved," he said. "They are established and traditional powers, and the president is just implementing them in the form of regulations and not really adding to those powers."

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