

# Can a New Administration Undo a Previous Administration's Regulations?

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## Related Author

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- [Maeve P. Carey](#)

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Maeve P. Carey, Specialist in Government Organization and Management ([mcarey@crs.loc.gov](mailto:mcarey@crs.loc.gov), 7-7775)

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Following the election of Donald J. Trump on November 8, 2016, questions have been raised as to whether and how a new President's administration can amend or repeal regulations issued by the previous administration. In short, once a rule has been finalized, a new administration would be required to undergo the rulemaking process to change or repeal all or part of the rule. If a rule has not yet been finalized, however, a new President may be able, immediately upon taking office, to prevent the rule from being issued. In addition to these administrative actions, Congress can also take legislative action to overturn rules.

## Changing or Repealing Previously Issued Rules

Under the Administrative Procedure Act (APA), ["rulemaking" is defined](#) as "formulating, amending, or repealing a rule," meaning that an agency must follow the rulemaking procedures set forth by the APA and other statutory and executive order requirements to change or repeal a rule. (For more on these procedures, see CRS Report RL32240, [The Federal Rulemaking Process: An Overview](#), coordinated by Maeve P. Carey.)

Under the APA's rulemaking procedures, [agencies are generally required to publish a notice](#) of proposed rulemaking (NPRM) in the *Federal Register*, allow "interested persons" an opportunity to comment on the proposed rule, and, after considering those comments, publish the final rule. Furthermore, in most cases, the final rule may not become effective until at least 30 days after its publication. Sometimes Congress has required agencies to undertake additional or alternative procedures to issue rules. Such procedures are not addressed here, but also may be required for an agency to amend or repeal a previously issued rule.

Alternatively, a new President and Congress may be able to overturn a regulation issued by the previous administration more expeditiously by using the Congressional Review Act (CRA). (See CRS In Focus IF10023, [The Congressional Review Act \(CRA\)](#), by Alissa M. Dolan, Maeve P. Carey, and Christopher M. Davis.) The CRA, enacted in 1996, was intended to assert congressional control over agency rulemaking by establishing a special set of expedited or "fast track" legislative procedures for this purpose, primarily in the Senate. In short, if both houses of Congress pass a joint resolution of disapproval under the CRA, the resolution would be sent to the President for signature. If the President signs the disapproval resolution, the rule would no longer have effect, would be treated as though it had never been in

effect, and the issuing agency would be prohibited from issuing a rule that is "substantially the same" as the nullified rule. (For more information about the CRA, see CRS Report R43992, [The Congressional Review Act: Frequently Asked Questions](#), by Maeve P. Carey, Alissa M. Dolan, and Christopher M. Davis.)

## Regulatory Moratoria and Postponements

Although rulemaking procedures are required to amend or repeal rules that have already been finalized, Presidents have more authority over rules that have not yet been finalized. One approach previous Presidents have used to control rulemaking at the start of their administrations has been the imposition of a moratorium on regulations under development—i.e., those that have not yet been published as final rules in the *Federal Register*. Such moratoria have essentially put a halt on rulemaking activities within the department and instructed departments and agencies to postpone the effective dates of rules that were issued at the end of the previous President's term. Importantly, however, such moratoria do not generally apply to rules that are required under statute or by a judicial decision.

### Ronald Reagan Administration

On January 29, 1981, shortly after taking office, [President Ronald Reagan issued a memorandum](#) to the heads of the Cabinet departments and the EPA Administrator directing them to take certain actions that would give the new administration time to implement a "new regulatory oversight process," particularly for "last-minute decisions" made by the previous administration. Specifically, the memorandum said that agencies must, to the extent permitted by law, (1) publish a notice in the *Federal Register* postponing for 60 days the effective date of all final rules that were scheduled to take effect during the next 60 days, and (2) refrain from promulgating any new final rules. [Executive Order 12291](#), issued a few weeks later, contained another moratorium on rulemaking that supplemented the January 29 memorandum.

### William Clinton Administration

On January 22, 1993, Leon E. Panetta, the Director of the Office of Management and Budget (OMB) for the incoming William Clinton Administration, [sent a memorandum](#) to the heads and acting heads of Cabinet departments and independent agencies requesting them to (1) not send proposed or final rules to the Office of the Federal Register for publication until they had been approved by an agency head appointed by President Clinton and confirmed by the Senate, and (2) withdraw from the Office of the Federal Register all regulations that had not been published in the *Federal Register* and that could be withdrawn under existing procedures.

### George W. Bush Administration

On January 20, 2001, Andrew H. Card, Jr., assistant to President George W. Bush and White House Chief of Staff, [sent a memorandum](#) to the heads and acting heads of all executive departments and agencies generally directing them to (1) not send proposed or final rules to the Office of the Federal Register, (2) withdraw from the Office rules that had not yet been published in the *Federal Register*, and (3) postpone for 60 days the effective dates of rules that had been published but had not yet taken effect.

### Barack Obama Administration

On January 20, 2009, Rahm Emanuel, Assistant to President Barack Obama and Chief of Staff, [sent a memorandum](#) to the heads of executive departments and agencies requesting that they generally (1) not send proposed or final rules to the Office of the Federal Register, (2) withdraw from the Office rules that had not yet been published in the *Federal Register*, and (3) "consider" postponing for 60 days the effective dates of rules that had been published in the *Federal Register* but had not yet taken effect.

For additional information on these moratoria and the practice of "midnight rulemaking," under which Presidents often increase rulemaking activity in the final months of their administration, see CRS Report R42612, [Midnight Rulemaking: Background and Options for Congress](#), by Maeve P. Carey.