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January 30, 2025

Two Tools for Trump To Dismantle Biden-Era Rules: the Regulatory Freeze and the Congressional Review Act



President Donald Trump has issued a presidential memorandum, which has the effect of an Executive Order, titled “[Regulatory Freeze Pending Review](#)“ (the Regulatory Freeze). This Regulatory Freeze puts a hold on new agency rules and guidance until his appointees can review them, the effects of which will delay or derail many of the regulations that agencies issued under the Biden administration in its final months.

### **Scope of the Regulatory Freeze**

The Regulatory Freeze orders all “executive departments and agencies” to take the following actions:

- Halt the adoption of any new proposed rule or final rule until an agency head appointed by President Trump reviews and approves such rule.
- Immediately withdraw any rules that have already been adopted and sent to the *Federal Register* but have not been published.
- For any rule already adopted and published in the *Federal Register* but not yet effective, “consider” postponing for 60 days from the date of the Regulatory Freeze (January 20, 2025) the effective date of such rule. During the 60-day freeze, the agency may consider opening a new comment period to allow interested parties to provide comments about issues of fact, law, and policy raised by the postponed rule or may consider further delaying—or publishing for notice and comment—proposed rules further delaying the postponed rule beyond the 60-day period.

In other words, the first two orders concerning pending rules that have either not yet been adopted or published in the *Federal Register* are **mandatory**. No new regulatory proposal nor any rule that may have been adopted but not yet published in the *Federal Register* can move forward without review and approval by an agency head appointed by President Trump. However, the last order addressing rules that have been adopted and published in the *Federal Register* (but not yet become effective) is **discretionary**.

The Regulatory Freeze *does not* apply to rules that were published in the *Federal Register* and became effective *before* January 20, 2025. As described in more detail below, such rules may separately be subject to revocation by Congress if they were adopted after August 1, 2024, as such rules are likely still within the purview of review under the Congressional Review Act.

The Regulatory Freeze also does not apply to prior Executive Orders (EOs). President Trump separately issued “[Initial Recissions of Harmful Executive Orders and Actions](#),” which rescinded numerous EOs issued by President Joe Biden.

## **Types of Regulatory Rules**

The Regulatory Freeze has broadly defined “rules” to capture a wide range of agency items, including the following:

- “Rules” as defined under the [Administrative Procedure Act](#) (“the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing”).
- “Regulatory actions” as defined in [Executive Order 12866](#) (“any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.”).
- “Guidance documents” as defined in [Executive Order 13891](#) (“an agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation”).

The Regulatory Freeze, however, includes an exemption for any not-yet-published rule that the Office of Management and Budget director “deems necessary to address emergency situations or other urgent circumstances.”

## **Legislative Repeal by the Congressional Review Act**

As noted above, another tool that Congress may consider to overturn certain federal agency actions is the [Congressional Review Act](#) (CRA). Under the CRA, both houses of Congress may pass a resolution signed by the president which overturns a final rule and prevents the agency that adopted the rule from adopting a “substantially similar” one in the future unless Congress provides express authorization to do so. With Republicans controlling Congress and the White House, the political prospects are quite strong for Congress and the Trump administration using the CRA to overturn rules adopted by the Biden administration. The CRA, however, limits how far in the past Congress may look back to overturn prior rules under a calculation that appears to designate [August 1, 2024](#), as the furthest back Congress may reach in reviewing regulations at this time.

The CRA applies to “rules” as defined under the [Administrative Procedure Act](#) but excludes (1) rules of particular (as opposed to general) applicability; (2) rules relating to agency internal management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of nonagency parties.

## Potential CRA-Targeted Rules

We expect the following agency rules will be likely potential targets for repeal via the CRA, based on the stated priorities of the incoming Congress:

- Financial Crimes Enforcement Network’s [Residential Real Estate Rule](#), set to go into effect on December 31, 2025, which would impose certain beneficial ownership transparency reporting requirements in relation to cash residential real property transactions.
- Environmental Protection Agency’s (EPA) Waste Emission Charge Rule, effective January 17, 2025, that directs the EPA to collect a charge on methane emissions that exceed certain thresholds.
- Health and Human Services’ [Head Start Program Performance Standards Rule](#), effective August 21, 2024, which raises wages for teachers in the Head Start program.
- Food and Drug Administration’s [Tobacco Product Rule](#), effective September 30, 2024, that prohibits the sale of tobacco products to persons under 21 years of age.
- Internal Revenue Service’s [Broker Reporting Rule](#), effective February 28, 2025, which would require brokers to report gross proceeds on dispositions of digital assets, including cryptocurrency sales.
- Consumer Financial Protection Bureau’s (CFPB) [Open Banking Rule](#), effective January 17, 2025, which would require banks, credit unions, and other financial service providers to make consumers’ data available upon request to consumers and authorized third parties in a secure and reliable manner.
- The CFPB’s [Larger Participants for General-Use Digital Consumer Payment Applications Rule](#), effective January 9, 2025, which would define and subject larger participants of a market for general-use digital consumer payment applications to the CFPB’s supervisory authority under the Consumer Financial Protection Act.

## Takeaways

The Regulatory Freeze together with the CRA will likely create uncertainty, at least in the near term, regarding the legal status of certain federal regulations. Companies should monitor the status of proposed and effective rules and guidance and be prepared to provide comments or feedback to the agencies that open new comment periods about Biden-era rules and potentially adjust compliance plans and strategies accordingly.

Perkins Coie will continue to monitor developments under the Regulatory Freeze and attempts to roll back regulations under the CRA. For up-to-date coverage of this and other developments regarding new presidential actions, please subscribe to our dedicated Perkins Coie blog, [Regulatory Roundup: Navigating a New Era](#).

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