

INSIGHTS

In Line With Recent Precedent, Trump Administration Directs Federal Agencies to Halt New Regulations

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As expected, one of President Trump's first actions after being sworn in to office was to issue a memorandum outlining his administration's plans for managing new or pending federal regulations. As shown in the Table below, [the memorandum](#) from President Trump's Chief of Staff, Reince Priebus, to the heads of executive departments and agencies falls generally in line with the initial actions of several recent new Presidents, from Reagan to Obama. With a goal of allowing those in the Trump Administration an opportunity to review midnight regulations, the memorandum orders federal agencies to, with some exceptions: (1) refrain from sending any proposed or final regulations to the Federal Register; (2) withdraw any regulations already sent to the Federal Register for publication; and (3) postpone for 60-days the effective date of any regulations that have been published in the Federal Register, but not yet taken effect.

In order to have an open public process as required by the Administrative Procedure Act (APA), all final rules of federal agencies must be published in the Federal Register before they can become effective. The memo therefore halts any new federal regulations from taking effect until such time as a Trump Administration designee can review and approve. The memo contains some exceptions. First, the Director or Acting Director of the Office of Management and Budget (OMB) may exclude certain regulations from the directives outlined in the memo to the extent they affect critical health, safety, financial, national security matters, or for some other reason determined by the OMB Director. Second, any regulations that are being promulgated due to "statutory or judicial timelines" are also excluded from the limitations in the memo.

With respect to those rules already published in the Federal Register but not yet taken effect, the memo directs agencies to, "as permitted by applicable law," postpone their effective date for 60 days from January 20, 2017. The delay will allow the Trump Administration to review "questions of fact, law, and policy" associated with those final rules. The memo also suggests that agencies consider proposing for notice and comment a rule to delay the effective date of a final rule beyond 60 days.

The directives outlined in the memo apply to any "regulation" or "regulatory action" as defined in section 3(e) of [Executive Order 12866](#). The Trump Administration is also applying the directives of the memo to any "guidance document" i.e., "an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a

statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.”

