



# After Midnight

The Bush legacy of deregulation and what Obama can do

---

Reece Rushing, Rick Melberth, and Matt Madia January 2009

# Executive summary

The Bush administration rushed out a host of problematic regulations in its final months. Many of these “midnight” regulations actually represent deregulatory actions that weaken or eliminate safeguards protecting health, safety, the environment, and the public’s general welfare.

The appendix provides a list of several dozen of these regulations. They include, for example:

- A rule that relaxes enforcement against factory-farm runoff
- A rule that permits more waste from mountaintop mining to be dumped into waterways
- A rule seemingly designed to protect pharmaceutical companies from being held liable for marketing products they know are unsafe
- A rule that makes it more difficult for workers to take advantage of the Family and Medical Leave Act
- A rule that reduces access of Medicaid beneficiaries to services such as dental and vision care
- A rule that could limit women’s access to reproductive health services.

The Obama administration and new Congress are now faced with the question of how to respond to the Bush administration’s midnight regulation. The response is clear for proposed rules—rules that are in the pipeline but not yet finalized. Executive branch agencies, acting under the direction of new political leadership, can simply stop working on those rules and withdraw them from their regulatory agendas. Or agencies may choose to improve or strengthen Bush-proposed rules before publishing them as final rules.

Final rules present a more difficult problem. Executive branch agencies cannot throw out a final Bush rule with a stroke of a pen. They must conduct an entirely new rulemaking—the legal process by which regulations are made—which often consumes significant time and resources. Unless a rule’s effective date is suspended, which may be possible for a limited number of Bush rules, the rule remains law until a new rulemaking is completed.

Congress also can intervene to block or undo midnight regulation. The Congressional Review Act allows Congress to vote down Bush regulations completed after May 15, 2008, using special expedited procedures. Funding also may be withheld to block implementation or enforcement of undesirable rules.

The last option for dealing with midnight regulation is the courts. Lawsuits are likely to challenge many of the Bush administration's midnight regulations. The Obama administration will have to decide how to respond to these suits. In some cases, the administration may be able to enter into settlements that effectively torpedo Bush rules.

The Obama administration also must contend with Bush administration rules completed before the “midnight” period. Indeed, the Bush administration's final flurry was just part of an eight-year campaign to gut public safeguards in service to corporate special interests and right-wing ideology. As a result of these actions, the nation's air and water are less healthy, consumers and investors are more likely to be defrauded, food and other products are less safe, workers are at greater risk of being injured or killed, and public land is being degraded by rampant mining and drilling. President Obama faces an enormous challenge in reversing the damage.

This task is even more difficult because of procedural roadblocks erected under President Bush that serve to prevent protective regulation. These roadblocks generally skew analytical requirements to favor corporate interests and add bureaucratic layers to gum up the rulemaking process.

As the Obama administration reverses Bush policies, it also must move forward with a positive regulatory agenda that recognizes a fundamental responsibility to protect the public's health, safety, and general welfare. This will require open and honest assessment of risks, vigorous monitoring and enforcement, and new regulatory protections where there are gaps or where existing protections are not strong enough. The last eight years have left much work to be done.

---

### About the Center for American Progress

The Center for American Progress is a nonpartisan research and educational institute dedicated to promoting a strong, just and free America that ensures opportunity for all. We believe that Americans are bound together by a common commitment to these values and we aspire to ensure that our national policies reflect these values.

We work to find progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals that foster a government that is “of the people, by the people, and for the people.”

---

### Center for American Progress



Center for American Progress  
1333 H Street, NW, 10th Floor  
Washington, DC 20005  
Tel: 202.682.1611 • Fax: 202.682.1867  
[www.americanprogress.org](http://www.americanprogress.org)

### About OMB Watch

OMB Watch is a nonprofit government watchdog organization dedicated to promoting government accountability, citizen participation in public policy decisions, and the use of fiscal and regulatory policy to serve the public interest.

---



OMB Watch  
1742 Connecticut Avenue, NW  
Washington, DC 20009  
Tel: 202.234.8494 • Fax: 202-234-8584  
[www.ombwatch.org](http://www.ombwatch.org)