



# Cleaning Up and Launching Ahead

What President Obama can learn from previous administrations  
in establishing his regulatory agenda

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Anne Joseph O'Connell January 2009

Center for American Progress



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# Executive summary

As presidential transitions approach, a flurry of new regulation typically occurs as the outgoing administration moves to wrap up work and cement the president's legacy. The Bush administration was no different. It finished more significant regulatory actions in the third quarter of 2008—the last quarter for which there is consolidated information—than in any preceding quarter of the administration, according to data gathered for this report.

Attention now turns to the Obama administration and how it will respond. Just as administrations finish with a midnight flurry, new administrations begin with “crack-of-dawn” actions designed to block or undo the outgoing administration's work.

Such countermeasures take considerable energy and resources. Perhaps as a result, new presidents typically initiate fewer regulatory actions, or rulemakings, in the first year of their terms than in later years. President Barack Obama will have to change past practice if he wishes to avoid this pattern and capitalize on his electoral mandate by quickly implementing an affirmative regulatory agenda.

This report analyzes comprehensive new data on federal agency rulemaking, particularly during White House transitions, from 1983 to 2008. The data put in context the Bush administration's midnight rulemaking and offer lessons for the Obama administration as it assumes power. In particular, this analysis reveals:

- **Regulatory output spikes in the final year of an administration.** Cabinet departments under Presidents Ronald Reagan and George H.W. Bush finished more rulemaking actions in the final year than in any other year of their administrations. President Bill Clinton's cabinet also increased its output in the final year, but completed considerably more actions in 1994, the last year before the Republicans took control of Congress.
- **Significant rulemaking also appears to increase in the last months of an administration.** In addition to the Bush administration's spike in output in the third quarter of 2008, mentioned above, President Clinton finished more “significant” rules in his final quarter than in any quarter since 1995, the earliest year for which agencies regularly reported on the economic and social importance of their regulations.

- **Administrations sometimes start regulations in the waning months that they are unable to finish.** President Clinton's spate of midnight regulatory activity generated much press attention. But President George H.W. Bush's cabinet began over 75 percent more notice-and-comment rulemakings in the final quarter of his term than did President Clinton, and nearly 30 percent more than President Reagan. President George W. Bush's cabinet and executive agencies also initiated many new actions over the last year, issuing as many or more notices of proposed rulemaking, or NPRMs, in the first three quarters of 2008 as in any similar preceding period. The Obama administration must decide whether to withdraw regulations proposed but not finished under President Bush from agency regulatory agendas.
- **Recent presidents have all immediately tried to block or undo some regulatory actions of their predecessors.** All four administrations analyzed in this report imposed a temporary moratorium on rulemaking until their political appointees were in place and withdrew at least some regulations that were started under their predecessor. In both the Clinton and George W. Bush administrations, for example, the Department of Interior withdrew the greatest number of rules from its regulatory agenda in the inaugural year. In addition, Presidents Reagan and George W. Bush suspended the effective dates of regulations that had been issued in the waning days of the Carter and Clinton administrations, respectively. President George W. Bush also signed a "resolution of disapproval" passed by Congress under the fast-track process of the Congressional Review Act to repeal a rule designed to protect workers from repetitive stress injuries that was enacted in Clinton's closing days.
- **President George W. Bush took unprecedented steps to make his last-year regulations harder to overturn.** In May 2008, White House Chief of Staff Joshua Bolten informed executive agencies that they should not propose any new rules after June 1 and should finish rules by November 1, except in "extraordinary circumstances." Major economic rules generally cannot take effect for at least 60 days after they are issued. The Bolten directive was, it seems, intended to block the new president from suspending the effective dates of Bush rules, as the Bush administration did to the Clinton administration. Agencies, however, did not always meet the November 1 deadline. President Obama may be able to suspend the effective dates of major rules issued within 60 days of his inauguration.
- **Recent presidents have been much slower in initiating their own notice-and-comment rulemakings.** Cabinet departments and executive agencies, as groups, have started fewer, not more, rules in the first year of a presidential administration than in later years. In the first year of President Clinton and President George W. Bush's administrations, for example, the Environmental Protection Agency issued 75 and 45 proposed rules, respectively, in contrast to 105 and 75 in their second years. The Department of Interior, likewise, issued only 49 proposed rules in President Bush's first year, the lowest annual number during his administration.

- **Emergency or interim rules sometimes spike in the first year of an administration.**

Agencies can enact emergency or interim rules without prior notice and comment. Such rules may be appealing to new administrations because they take far less time to issue.

These rules increased at cabinet departments, for example, in the first year of the Clinton administration and in the first year of the George W. Bush administration.

To exert control over the rulemaking process, a new president should focus on two primary tasks: undoing undesirable actions of the outgoing administration as efficiently as possible and formulating quickly his own regulatory agenda. This report proposes eight steps, summarized in the box below, to foster this control. These reforms are, with one exception, within the direct control of the executive branch. Because of potential legal challenges, the executive branch must implement these reforms with care.

## Recommendations

1. President Obama should immediately direct the cabinet and executive agencies to pull unpublished rules sent to the *Federal Register* in the last days of the outgoing administration.
2. President Obama should direct non-independent agencies to temporarily suspend the effective dates of final regulations that have not taken effect and provide a short justification for any suspension.
3. The White House should work with the Justice Department to settle certain lawsuits challenging midnight regulations so that new agency leaders can revise those regulations.
4. The White House should work with Congress to use the Congressional Review Act to repeal undesirable midnight rules that have taken effect.
5. President Obama should direct agency heads to immediately establish new rulemaking priorities, consistent with his agenda.
6. The presidential personnel office should work to quickly staff agencies critical to the president's regulatory priorities.
7. The White House should work with executive agency leaders to issue notices of proposed rulemaking swiftly to implement the administration's regulatory priorities.
8. The White House should work with agency leaders to determine which regulatory priorities can be achieved without prior notice-and-comment procedures.

# Background

In the waning months of President George W. Bush's administration, as some political appointees fled government service, others worked to wrap up "midnight" regulations before the inauguration of President Obama. The Bureau of Land Management, for example, finished a rule after November's election that it had proposed just four months earlier permitting drilling for oil shale on federal land in western states.<sup>1</sup> In mid-December, the Environmental Protection Agency promulgated a regulation proposed the preceding year expanding the amount of hazardous waste that is free from incineration limits.<sup>2</sup> These midnight regulations occurred despite an explicit directive in May from Chief of Staff Joshua Bolten instructing agencies to finalize rulemakings by November 1, except for "extraordinary circumstances."<sup>3</sup>

To be certain, the Bush administration was not unique. Right before President Clinton left the White House his agencies finalized energy efficiency standards for washing machines and established significant workplace ergonomic mandates to ward off musculoskeletal injuries.<sup>4</sup> Indeed, during each recent transition, even if the next president was from the same party as the departing one, the outgoing administration has tried to extend its policies through late-term regulatory actions.

The inauguration brings another set of regulatory actions designed to respond to the actions of the outgoing administration. On President Bush's first day in office, for example, then-Chief of Staff Andrew Card issued a directive that sought to immediately block last-minute Clinton actions. This "crack-of-dawn" directive prohibited agencies from sending regulatory announcements to the *Federal Register*, unless a Bush appointee had approved them; called for the withdrawal of Clinton regulations that had been sent to the *Federal Register* but not published; and instructed agencies to suspend the effective dates of rules that had been published but had not gone into effect.<sup>5</sup> The May Bolten memorandum presumably was intended to take the last option off the table, since finishing regulations by mid-November ensured they would be in effect before President Obama's inauguration.

There is a certain irony in the Card memorandum. After all, eight years earlier, as secretary of transportation, Andrew Card was trying to push a number of deregulatory measures through before President George H.W. Bush departed.<sup>6</sup> But Card's actions, as cabinet secretary and as chief of staff, nicely demonstrate the political cycles of rulemaking.

The crack-of-dawn review is a big job, but a bigger job lies ahead. Eventually, a new administration must initiate its new regulatory (or deregulatory) programs. Not only are agency rules a large portion of agency policymaking, they are also a significant part of all policymaking. In 2007, Congress enacted 138 public laws.<sup>7</sup> By contrast, in that same year, federal agencies finalized 2,924 rules, of which 61 were labeled as major regulations (having at least an annual \$100 million or other considerable adverse effect on the economy).<sup>8</sup>

These rules cover everything from the seemingly trivial (the size of holes in “Swiss” cheese)<sup>9</sup> to matters of life-and-death importance (a cap-and-trade system for power plant emissions of sulfur dioxide and nitrogen oxide).<sup>10</sup> Although agencies generally have several tools at their disposal—regulations, adjudications, guidance, or policy statements, to name a few—regulations (or legislative rules, as they are known to lawyers) are the prominent mechanism of administrative policymaking.<sup>11</sup>

Agency rulemaking, the process by which regulation is made, often follows notice-and-comment procedures. After internal discussion and review, an agency begins the process by publishing a notice of proposed rulemaking, or NPRM, in the *Federal Register*. The agency then accepts comments from the public for a certain period, usually 30 or 60 days. The agency reviews the comments and decides eventually to enact the rule (with or without modifications, though the modifications must be a “logical outgrowth” of the proposed rule) or to withdraw the proposed rule. There are some important exceptions to these procedures, including interim final (or “good cause”) rules when the agency believes it must act immediately.<sup>12</sup>

This report focuses on midnight and crack-of-dawn regulatory activity, including completions of rulemakings, withdrawals of uncompleted rulemakings, and the initiation of new rulemakings. The report then makes several recommendations for how a new administration can effectively unravel late actions by the outgoing administration and quickly start implementing its own regulatory agenda.

# Agency rulemaking in political transitions

Until recently, we knew remarkably little about agency rulemaking during political transitions.<sup>13</sup> This report analyzes political cycles of rulemaking using an extensive database of agency reports in the Unified Agenda of Federal Regulatory and Deregulatory Actions, from fall 1983 to fall 2008. Specifically, the report considers (1) the completion (and initiation) of regulatory actions, particularly before political transitions; (2) the withdrawal of uncompleted regulations, particularly after political transitions; and (3) the initiation of new regulatory programs.

On all these topics, special consideration is given to two important agencies: the Environmental Protection Agency and the Department of Interior. The appendix describes the data and methodology in more detail.

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## Midnight regulatory activity

As presidential transitions approach, outgoing administrations move to wrap up work and cement their legacies. Others have remarked on efforts to “burrow” political appointees into the career civil service,<sup>14</sup> designate wide swaths of land for national monuments,<sup>15</sup> and grant presidential pardons.<sup>16</sup> This report focuses on late-term regulatory actions.

Cabinet departments under Presidents Reagan and George H.W. Bush finished more rulemaking actions in the final year than in any other year of their administrations. There was also a spike at the end of the Clinton administration, although it was not the administration’s most active year. President Clinton’s cabinet completed considerably more actions in 1994, the last year before Republicans took control of Congress, than in his final year. Activity under the George W. Bush administration has been more constant, although numbers for 2008 derive from the fall 2008 Unified Agenda and consequently miss at least several months of the year. Similar patterns are observed when comparing completions only in the November to January period each year (to get at the post-election/pre-inauguration period).

**Number of final actions by cabinet departments, executive agencies, and independent agencies**

By year, 1983 to 2008

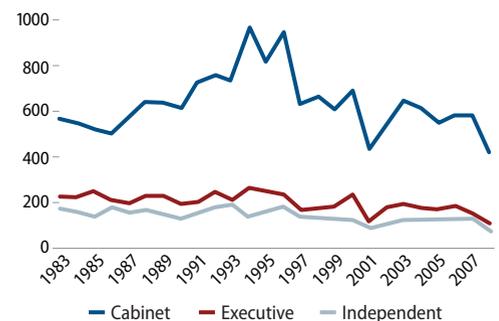


FIGURE 1

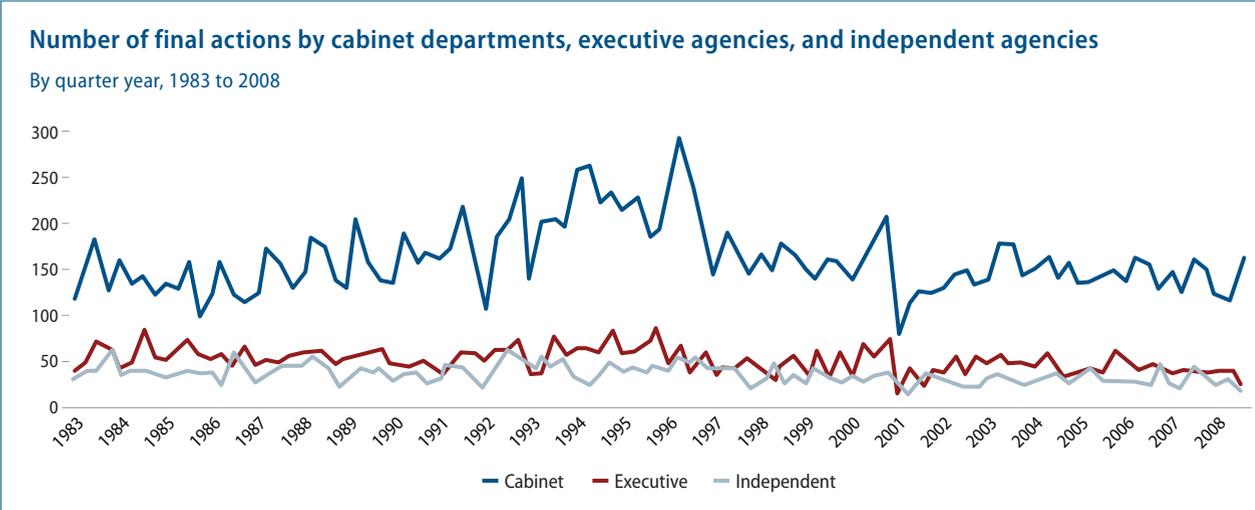
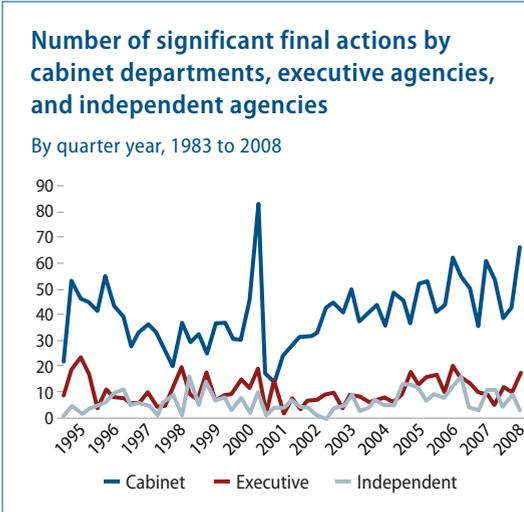
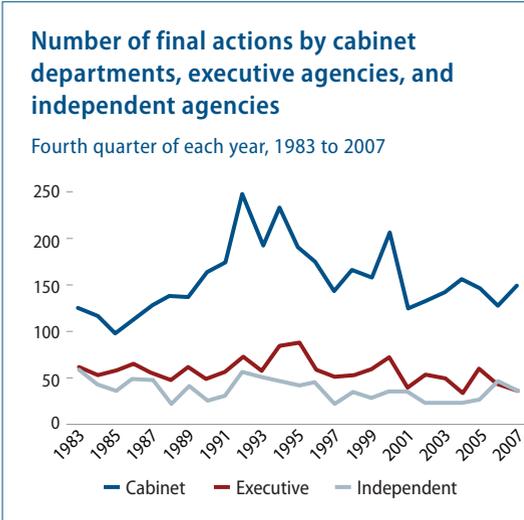


Figure 1 shows the number of regulations completed in each of the last 25 years, from 1983 to 2008, by cabinet departments, executive agencies (such as the EPA), and independent agencies (such as the Securities and Exchange Commission). Figure 2 displays these completions by quarter year for the same period. Figure 3 shows a slice of Figure 2, displaying completions only in the fourth quarter (November to January).

The tendency for midnight regulation is heightened for significant rulemakings. The Unified Agenda has collected information on the importance of reported regulatory actions since 1995. Significant rulemakings include actions that are likely to have an effect of at least \$100 million on the economy or other considerable effects. Figure 4 charts significant completions by quarter year from 1995 to 2008. President Clinton finished more important actions in his final quarter than in any other quarter for which agencies reliably submitted such data; President George W. Bush similarly finished more significant regulatory actions in the third quarter of 2008, the last quarter for which there are consolidated reports, than in any preceding quarter in his administration.

Commentary on midnight regulations generally targets the completion of rulemakings before a presidential transition. But sometimes agencies start regulations in the waning months of an administration that they are unable to finish. Figure 5 displays the number of NPRMs issued in the November to January period, from 1983 to 2007. Much press attention was given to President Clinton's spate of midnight regulatory activity. But interestingly, President George H.W. Bush's cabinet began over 75 percent more notice-and-comment rulemakings in the final quarter of his term than did President Clinton and nearly 30 percent more than



President Reagan. President Bush presumably hoped and expected to have a second term to push his (de)regulatory priorities. When he lost his 1992 re-election bid, it appears that he tried to push those priorities through before President Clinton took office.<sup>17</sup>

Charts 1 and 2 display the number of final regulatory actions and notices of proposed rulemaking in the last quarter of each year from 1983 to 2007 for the EPA and DOI, respectively. The EPA proposed more rules in the final quarter of 1994 than in *any* other quarter of the Clinton administration, right before party control in Congress shifted to the Republicans in both chambers in 1995. But the EPA finished more rules in the final quarter of the Clinton administration, before President George W. Bush took office, than in any other final quarter and all but one other quarter (May to July 1999). The DOI began and completed more rulemakings in the final quarter of President George H.W. Bush's administration than in any other November to January period in his term.

President George W. Bush is the only recent president to issue a directive establishing rulemaking deadlines at the end of his administration—June 1 for issuing proposed rules and November 1 for final rules. Major economic rules generally cannot take effect for at least 60 days after they are issued. The deadlines set by the directive, which was delivered in May by the White House chief of staff, Joshua Bolten, appear designed to ensure that the Bush administration's midnight regulations were in effect at the time of the new president's inauguration. In that way, the new president—as it turned out, President Obama—would be unable to suspend the effective dates of those regulations, as the Bush administration did for many last-minute Clinton rules. Some agencies appear to have followed the Bush deadlines, but others did not.

### Crack-of-dawn responses

After political transitions, agencies try to assert control over the regulatory process. That control takes several forms. Table 1 summarizes the use of various crack-of-dawn regulatory mechanisms by the past four administrations.

All four administrations withdrew at least some regulations that were started but not completed under their predecessor. They also imposed a temporary moratorium on sending rulemaking actions to the *Federal Register* without approval (or on rulemaking activities themselves); this prevented the cabinet and executive agencies from regulating before

**Number of Notices of Proposed Rulemaking by cabinet departments, executive agencies, and independent agencies**

Fourth quarter of each year, 1983 to 2007

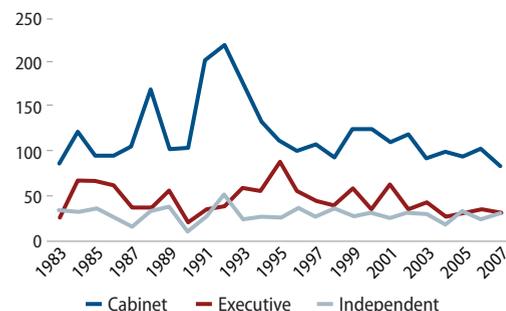


FIGURE 5

**Number of final actions and NPRMs by the Environmental Protection Agency**

Fourth quarter of each year, 1983 to 2007

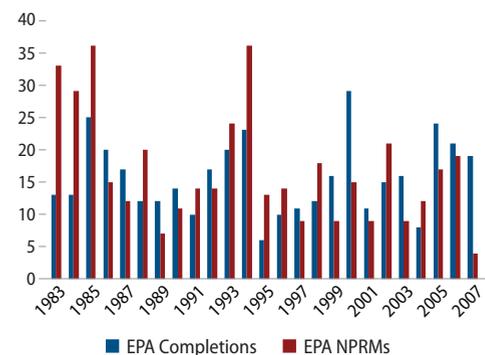


CHART 1

**Number of final actions and NPRMs by the Department of the Interior**

Fourth quarter of each year, 1983 to 2007

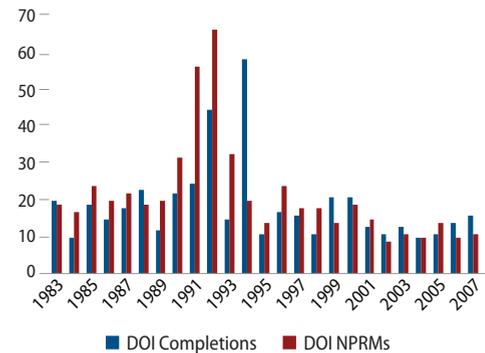


CHART 2

**TABLE 1**  
**Crack-of-dawn responses, by president**

President	Moratorium on rulemaking (or publication of rulemaking)	Withdrawal of uncompleted rulemakings	Suspension of effective dates of recently issued rules
Reagan	X	X	X
George H.W. Bush	X	X	
Clinton	X	X	
George W. Bush	X	X	X

the White House could install political appointees and determine its regulatory (or deregulatory) priorities. In addition, Presidents Reagan and George W. Bush suspended the effective dates of non-independent agency regulations that had been finalized in the waning days of the Carter and Clinton administrations, respectively, but had not yet taken effect.<sup>18</sup>

A proposed but unfinished rule generally can be withdrawn for any reason, without prior notice and opportunity for comment. Figure 6 displays the number of withdrawals of regulatory actions by cabinet departments, executive agencies, and independent agencies by year from 1983 to 2008. Cabinet departments withdrew the most regulatory actions in 1995, the year Republicans took control of Congress, and President Bush's first two years, 2001 and 2002. Executive agencies by far cancelled the most rulemakings in 1995, a spike that mostly derives from regulatory terminations by the Internal Revenue Service.

Figure 7 charts withdrawals for the EPA and DOI. The EPA cancelled more regulatory actions in 1995 than any year. There was no significant jump in withdrawals once President George W. Bush took office, perhaps because Clinton's EPA left few uncompleted rulemakings. The DOI withdrew the most actions in 1993 and 2001, at the start of the Clinton and Bush administrations, respectively. Recall that President George H.W. Bush's DOI commenced a large number of rulemakings in its final year.

### Initiation of new regulatory agendas

New administrations can also exert control over the administrative state by commencing new notice-and-comment rulemakings. Figure 8 presents the number of NPRMs by cabinet departments, executive agencies, and independent agencies from 1983 to 2008. Figure 9 displays NPRMs for the EPA and DOI for the same period.

**Number of withdrawals of regulatory actions by cabinet departments, executive agencies, and independent agencies**

By year, 1983 to 2008

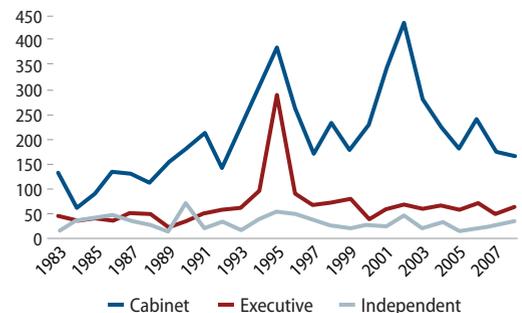


FIGURE 6

**Number of withdrawals of regulatory actions by the EPA and DOI**

By year, 1983 to 2008

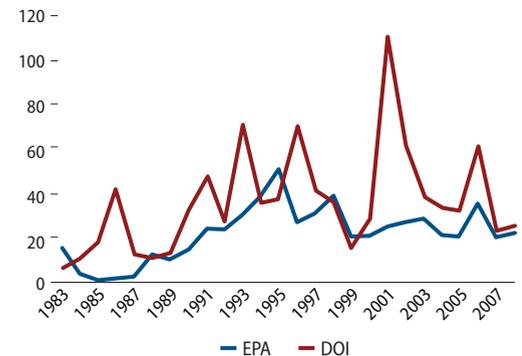


FIGURE 7

**Number of NPRMs by cabinet departments, executive agencies, and independent agencies**

By year, 1983 to 2008

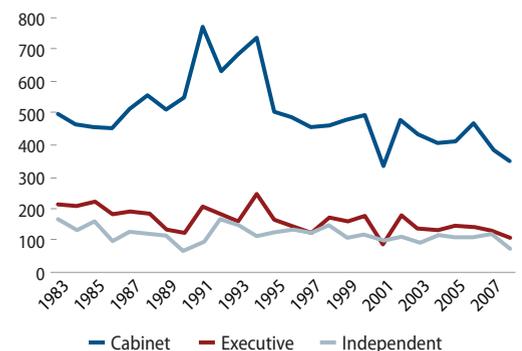


FIGURE 8

Under President Clinton, the DOI issued more NPRMs in the administration's first year than in later years. But generally cabinet departments and executive agencies—the agencies under the most presidential control—issue fewer NPRMs in the first year of an administration.

There are several possible explanations for this. Key leadership positions are frequently vacant at the start of administrations for long periods of time.<sup>19</sup> Regulatory agencies may be in a holding pattern until presidential appointees are confirmed. In addition, new administrations typically give a great deal of attention to the midnight regulation of the previous administration. Such review may distract a new administration from moving forward with its own regulatory agenda. Moreover, preparation of an NPRM can take significant time, often more than a year. If a new administration diverges ideologically from its predecessor, it may be starting from scratch in key areas, resulting in fewer NPRMs in the first year.

When presidents enter the White House, they tend to look for more unilateral devices that allow them to make an immediate policy imprint. Executive orders are a well-known example. Both Presidents Clinton and George W. Bush issued more executive orders in their first year than in other years of their administrations.<sup>20</sup>

Agencies can also issue emergency or interim final rules, without prior notice and comment. Figure 10 charts the number of such interim rules for the three major categories of agencies, from 1983 to 2008. These rules may be appealing to new administrations because they take far less time to issue. Interim rules increased at cabinet departments in the first year of the Clinton administration and in the first year of the George W. Bush administration. They also increased at executive agencies in the first year of the Clinton administration and the first year of the George H.W. Bush administration.

**Number of NPRMs by the EPA and DOI**

By year, 1983 to 2008

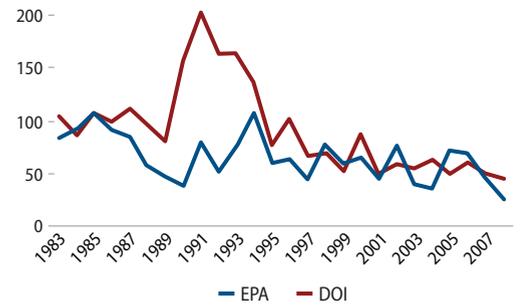


FIGURE 9

**Number of interim rules by cabinet departments, executive agencies, and independent agencies**

By year, 1983 to 2008

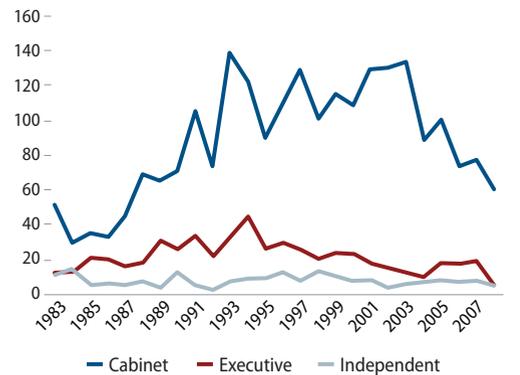


FIGURE 10

# Recommendations and conclusion

This report has shown that anecdotes of midnight regulations represent real trends in agency rulemaking. It also has demonstrated less reported agency patterns during presidential transitions—the withdrawal of uncompleted rulemakings by incoming presidents and the absence of a large number of new rulemakings in the first year of recent administrations. The empirical findings indicate that incoming presidents should focus on two primary tasks to gain control over the rulemaking process: undoing undesirable actions of outgoing administrations as efficiently as possible and formulating quickly their own regulatory agendas.

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## Responding to midnight regulations

Incoming presidents have competing demands for their attention. President Obama faces a severe economic crisis and two wars abroad, not to mention demands for better homeland security, wider health care coverage, and cleaner energy sources, to name just a few. When it comes to the federal bureaucracy, a new president needs to act quickly and effectively to address the varied midnight regulations of his predecessor while still juggling many other tasks. Regulations issued after notice and comment generally can be rescinded only after new notice-and-comment procedures, which is a lengthy process. There are a number of steps President Obama can take to counter undesirable regulations more quickly:

**President Obama should immediately direct the cabinet and executive agencies to pull unpublished rules sent to the *Federal Register* in the final days of the outgoing administration.** The directive should make exceptions for regulatory actions responding to statutory and judicial deadlines as well as for final rules necessary for public health and safety. The directive also should not apply to independent agencies, such as the Federal Communications Commission or Federal Trade Commission, because of their greater legal protections, although the directive could ask such agencies to comply voluntarily as was done under President George W. Bush.<sup>21</sup>

**President Obama should direct agencies to temporarily suspend the effective dates of final regulations that have not taken effect and provide a short justification for any suspension.** Regulations do not take effect until 30 or 60 days (depending on their significance) after they are finalized. That means a number of rules enacted in the closing

weeks of the Bush administration still will not be in effect at the beginning of the Obama administration. As with the first step, this directive should make exceptions for statutory and judicial deadlines and should not apply to independent regulatory commissions.

Suspending the effective date of such rules raises several complex legal questions. The suspension is an agency action, which is typically reviewable in court under the Administrative Procedure Act if the challenger has standing to sue. Although judicial review of agency action is generally quite deferential, courts have struck down some suspensions of final rules.<sup>22</sup> To protect a suspension from legal challenge, it should be for a limited period of time, 90 to 120 days, during which an agency can then engage in notice-and-comment procedures to undo the rule, and the agency should provide a short explanation for each suspension.<sup>23</sup> An agency can also “unfreeze” an effective date in the face of a judicial challenge, making the challenge moot and unreviewable in court.<sup>24</sup>

**The White House should work with the Justice Department to settle certain lawsuits challenging midnight regulations so that new agency leaders can revise those regulations.**

Judicial invalidation of a regulation offers an alternative to repeal through the rulemaking process. Individuals or groups harmed by a midnight regulation can lodge a challenge to the regulatory substance or process in federal court. While the court can eventually strike down or uphold the regulation, the mere filing of a lawsuit may provide an additional, quicker option to new leaders of an agency who dislike the regulation—the ability to settle the lawsuit.<sup>25</sup>

In a rulemaking settlement, the agency can agree not to enforce a midnight regulation and to institute proceedings to rescind or modify it. A key issue will be whether nonenforcement helps to advance the new administration’s regulatory priorities. This was true for the Bush administration when it agreed not to enforce more stringent requirements enacted in the waning days of the Clinton administration. For instance, in June 2001, the Interior Department settled a lawsuit brought by snowmobile makers to reverse a midnight regulation barring snowmobiles in Yellowstone National Park. The settlement, which had to be approved by the district court judge, required the National Park Service to reassess the environmental impact of snowmobiles in the park. Both environmentalists and snowmobile makers saw the additional review as a possible mechanism to undo the Clinton ban that was set to take effect in 2002.<sup>26</sup>

Such examples may be harder to find for the Obama administration. Nonenforcement of a midnight *deregulatory* action will not always produce a more regulated outcome. Agreeing not to enforce the midnight regulation that permits longer consecutive driving hours for truck drivers, for instance, likely does not reinstitute an earlier regulation imposing shorter hours. On the other hand, nonenforcement of the midnight regulatory action requiring health care providers to certify that they will permit their workers not to perform certain actions (such as abortions) on the basis of religious or moral grounds likely does match the new administration’s policy preferences.

As with suspensions of effective dates of midnight regulations, rulemaking settlements also may be subject to judicial review at the time of the settlement (in deciding whether to approve it) or later once a revised rule is enacted (in assessing the validity of the new rule). There seems, however, to be no significant case law on the legitimacy of a rulemaking settlement itself.<sup>27</sup> If the agency can justify in some rational manner its decision to enter into a rulemaking settlement that bars enforcement and mandates revision of a midnight regulation, perhaps relying on its rushed enactment, it can better protect itself from a legal challenge.<sup>28</sup>

**The White House should work with Congress to use the Congressional Review Act to repeal undesirable midnight rules that have taken effect.** Another alternative to the lengthy process of rescinding a regulation by notice and comment is congressional invalidation of the rule. The Congressional Review Act establishes a fast-track legislative repeal process, even if the rule has taken effect. The speed of the process mainly derives from the suspension of the traditional Senate cloture rule for such repeals.<sup>29</sup>

The Congressional Review Act places somewhat technical limits on the use of its fast-track process, which depend on when the House of Representatives and the Senate adjourn their annual sessions and on how many days they meet before adjournment. According to a November Congressional Research Service report, any final rule submitted to Congress after May 14, 2008 likely could be repealed by the 111<sup>th</sup> Congress under the Act.<sup>30</sup> (Congress can, of course, repeal any rule at any time through ordinary legislation).

Since the Congressional Review Act became law in 1996, Congress has used it only once, at the start of President George W. Bush's administration, to repeal the Occupational Safety and Health Administration's midnight ergonomics rule enacted before Clinton left the White House.<sup>31</sup> This paucity of repeals under the act is understandable, however. The act is much more likely to be used by a Congress and White House of the same party against a rule enacted by an administration of the opposing party. Given the time limits in the act, the only period until now that satisfies those constraints was the first few months of 2001, but during that period the Republicans had the slimmest hold on the Senate.

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## Launching an affirmative regulatory agenda

Although President Obama will want to repeal certain midnight regulations of his predecessor, he should not allow his regulatory agenda to be captured by those efforts. Rather, he should take steps to set a positive regulatory agenda. Specifically:

**President Obama should direct agency heads to immediately establish new rulemaking priorities, consistent with his agenda.** The rulemaking process is not short. One recent study examined the length of rulemakings between 1988 and 2003 for rules with statutory or judicial deadlines and rules without deadlines. Rulemakings without deadlines took an average of 528 days to complete after an NPRM was issued, and rulemakings

with deadlines took an average of 427 days.<sup>32</sup> As lengthy as this is, these measures do not account for the time needed to develop the NPRM. Isolating significant rulemakings, moreover, would show even longer durations.<sup>33</sup>

A quick start is especially important given the length of the rulemaking process. The sooner an agency can get started on its regulatory work, the sooner the president's agenda will be implemented. Work cannot begin, however, until priorities are defined. To launch its agenda, the White House should first agree on priorities with new agency leaders. Then, agency leaders should immediately move to establish new rulemaking priorities, consistent with President Obama's agenda, that are clearly communicated to agency staff and the public.

**The presidential personnel office should work quickly to staff agencies critical to the president's regulatory priorities.** President Obama, like other presidents, has been quick to nominate top picks for the cabinet and heads of other major agencies. It typically takes far longer, however, to select appointees for lower but still critical positions within the bureaucracy. This may help explain why new administrations generally have started fewer, not more, rulemakings in the first year than in later years. If the Obama administration is to be different, the presidential personnel office will have to more effectively work to staff agencies critical to the president's regulatory priorities.<sup>34</sup> With staff in place, agencies can quickly launch the administration's regulatory agenda and capitalize on President Obama's electoral mandate.

**The White House should work with executive agency leaders to issue NPRMs swiftly to implement the administration's regulatory priorities.** Once new rulemaking priorities are determined, agencies then will move to publish NPRMs in the *Federal Register*. The Office of Management and Budget must approve all NPRMs (and final rules) of non-independent agencies before they can be published.<sup>35</sup> This OMB review process, in place since the Reagan administration, can be contentious.<sup>36</sup> In one case, in May 2007, the National Oceanic and Atmospheric Administration submitted a proposal to limit the fishing of krill, an important food source for whales and other species in the Pacific Ocean. The OMB rejected the proposed rule five months later.<sup>37</sup>

The OMB should undertake several reforms to get desired NPRMs issued more quickly. First, the OMB should establish a separate review track for rulemaking proposals connected to important regulatory priorities of the administration. This track would provide faster review. Second, the OMB should actively work with agencies prior to the official review stage so that White House review goes more smoothly. Third, the OMB should prompt slower-acting agencies for proposals.<sup>38</sup>

**The White House should work with agency leaders to determine which regulatory priorities can be achieved without prior notice and comment procedures.** In some cases, the president might be able to issue an executive order in place of a regulation. In other cases, agencies may be able to enact regulations without prior opportunity for notice and comment.

In recent years, two categories of such regulations have been developed: direct final rules and interim final rules. Direct rules become effective a certain time after publication unless “adverse” comments are received. They are intended to expedite the enactment of non-controversial rules.<sup>39</sup> Interim rules take effect immediately upon publication or shortly thereafter; agencies then take comments on them after the fact. Interim rules are intended for use when the agency has good cause to enact rules immediately, such as in emergency situations.<sup>40</sup>

Rules in these categories increased across a wide range of agencies in recent years.<sup>41</sup> They generate more litigation risks, however, as injured parties often can challenge the agency’s choice to forgo prior notice and comment.<sup>42</sup> Keeping those litigation risks in mind, the White House can strategically use direct and interim rules to achieve certain regulatory goals more quickly than it could if agencies followed traditional notice-and-comment procedures.

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## Conclusion

Midnight regulations produce not only numerous media reports, but calls for banning them as well. These calls can come from either conservatives or liberals depending on the outgoing president.<sup>43</sup> Banning the practice, however, almost certainly will not happen—Congress would have to amend the Administrative Procedure Act<sup>44</sup>—and in any case, it would not accomplish much.

Instead of trying to push out regulations by January 20, agencies would instead work to enact rules before the new deadline. Midnight would simply become 11 p.m. Moreover, if agencies had to promulgate rules more than 60 days before inauguration, those rules would be much harder to undo since they would have all taken effect before the new president takes office.<sup>45</sup> Finally, to the extent that regulations are more pro-regulatory than deregulatory, a ban on midnight regulations likely would decrease the scope of federal controls over public health and the environment.

This report instead calls for modest and feasible reform that could have significant policy implications. Of the proposals advanced here, seven are within the control of the White House and federal agencies, while just one requires the assistance of Congress, which is obtainable given current party majorities. All will help the Obama administration repeal midnight regulations it dislikes and establish its own regulatory agenda more efficiently.

# Appendix: Data methodology

The information on regulatory actions in this report comes from a new database of agency rulemaking constructed by the author from federal agency semiannual reports in the Unified Agenda of Federal Regulatory and Deregulatory Actions.<sup>46</sup> These reports, published in the *Federal Register*, list many important features of the rulemaking process. For notice-and-comment rulemaking, they provide the date on which the notice of proposed rulemaking, or NPRM, was issued, the date(s) of the comment period(s), the date when the final rule was promulgated (if the process was completed), and the date the regulatory action was withdrawn (if the process was not completed). For rulemaking without prior opportunity for public comment, the reports give the dates of direct and interim final rules.

Because each Unified Agenda publication contains several thousand entries, coding from the hard copies of the *Federal Register* or even from an electronic version on Westlaw or LexisNexis would be extraordinarily time consuming. The General Services Administration's Regulatory Information Service Center provided the author with XML files of agency reports in the Unified Agenda from fall 1983 to fall 2008. The XML files, which use a markup language that combines text and structure in a manner that facilitates data sharing, made the database construction feasible.

The database contains information for all unique Regulation Identifier Numbers, or RINs, in the agenda reports for 15 cabinet departments, 10 executive agencies, and 22 independent agencies. The cabinet departments include the following: the Department of Agriculture (not including the Federal Crop Insurance Corporation); Department of Commerce; Department of Defense; Department of Education; Department of Energy (not including the Federal Energy Regulatory Commission); Department of Health and Human Services (not including the Social Security Administration); Department of Homeland Security (not including the Federal Emergency Management Agency); Department of Housing and Urban Development (not including the Office of Federal Housing Enterprise Oversight); Department of Interior; Department of Justice; Department of Labor (not including the Pension Benefit Guaranty Corporation); Department of State; Department of Transportation (not including the Surface Transportation Board and Saint Lawrence Seaway Development Corporation); Department of Treasury (not including the Internal Revenue Service); and the Department of Veterans Affairs/Veterans Administration.

The executive agencies include the following: the Environmental Protection Agency; Federal Emergency Management Agency; General Services Administration; Internal Revenue Service; National Aeronautics and Space Administration; National Archives and Records Administration; Office of Management and Budget; Office of Personnel Management; Small Business Administration; and the U.S. Agency for International Development.<sup>47</sup>

The independent agencies include the following: the Commodity Futures Trading Commission; Consumer Product Safety Commission; Equal Employment Opportunity Commission; Farm Credit Administration; Federal Communications Commission; Federal Crop Insurance Corporation; Federal Deposit Insurance Corporation; Federal Energy Regulatory Commission; Federal Home Loan Bank Board; Federal Housing Finance Board; Federal Maritime Commission; Federal Reserve Board; Federal Trade Commission; Interstate Commerce Commission; National Credit Union Administration; Nuclear Regulatory Commission; Office of Federal Housing Enterprise Oversight; Pension Benefit Guaranty Corporation; Saint Lawrence Seaway Development Corporation; Securities and Exchange Commission; Social Security Administration; and the Surface Transportation Board.<sup>48</sup>

The database includes, if applicable, relevant dates of traditional notice-and-comment rulemaking as well as binding rulemaking without prior opportunity for public comment (direct and interim final rules). It notes particular characteristics of rulemaking actions, including their significance and the existence of legal and statutory deadlines. The database also removes duplicate entries from the Unified Agenda reports.<sup>49</sup> After those duplicate entries are removed, there are 46,023 unique RINs in the database. Each RIN contains all relevant regulatory actions. Of those RINs, 21,451 report at least one NPRM with an actual date,<sup>50</sup> 25,845 report at least one final action, 3,194 report at least one interim final rulemaking, 331 report at least one direct final rulemaking, and 7,885 report at least one withdrawal or deletion of action.

The database incorporates the following additional coding assumptions:

**Years and quarters.** Years run from January 20 to January 19 of the following year. Thus, an NPRM issued on January 5, 2001 is counted as a 2000 NPRM. Quarters are marked as follows. The first quarter includes actions from February, March, and April. The second quarter includes actions from May, June, and July. The third quarter includes actions from August, September, and October. The fourth quarter includes actions from November, December, and January of the subsequent year. The fourth quarter matches (albeit somewhat imperfectly) the period between a November election and presidential inauguration every four years.

**Types of actions.** Actions are counted as interim final rules or NPRMs if the rulemaking action listed in the timetable field was an interim final rule or NPRM, respectively. Actions are counted as completed regulatory actions if the rulemaking action listed in the timetable field was a final rule or final action. Actions are counted as withdrawals if the rulemaking action listed in the timetable field was stated as a withdrawal or as deleted at agency request. Withdrawals are almost entirely of uncompleted regulatory actions, but some are of direct and interim final rules. Most critically, some regulatory actions that should have been listed as final actions, particularly before 2003, are listed in the timetable field as other. Such actions are not counted in the analysis presented here. More investigation needs to be done to see how many actions are being missed because of the coding scheme employed here. If an RIN had multiple dates for the same type of action, only one date was selected. For NPRMs and interim rules, the earliest date was used. For final actions and withdrawals, the latest date was used.

**Significance of actions.** Actions are deemed significant if the Priority Code field is listed as economically significant or other significant or if the major field was coded as “yes.”

# Endnotes

- 1 David A. Fahrenthold, "Bush Administration Pushes their Final Environment and Energy Policies," *The Washington Post*, December 19, 2008; Bureau of Land Management, "Oil Shale Management—General," *Federal Register* 73 (November 18, 2008): 69414.
- 2 R. Jeffrey Smith, "EPA Issues Exemptions for Hazardous Waste, Factor Farms," *The Washington Post*, December 13, 2008; Environmental Protection Agency, "Expansion of RCRA Comparable Fuel Exclusion," *Federal Register* 73 (December 19, 2008): 77953.
- 3 Memorandum from Joshua B. Bolten to the Heads of Executive Departments and Agencies and the Administrator of the Office of Information and Regulatory Affairs, May 8, 2008, available at <http://graphics8.nytimes.com/packages/pdf/washington/COS%20Memo%205.9.08.pdf>.
- 4 President George W. Bush kept the first. Matthew L. Wald, "Administration Keeps 2 Rules on Efficiency of Appliances," *The New York Times*, April 13, 2001. Congress killed the second under the Congressional Review Act. Public Law No. 107-5, 115 Stat. 7 (2001).
- 5 "Memorandum for the Heads and Acting Heads of Executive Departments and Agencies," *Federal Register* 66 (January 24, 2001): 7702. The memorandum excluded independent agencies, such as the Securities and Exchange Commission, actions in response to statutory or judicial deadlines, and actions related to an emergency or some other urgent situation connected to health and safety.
- 6 For example, see Federal Highway Administration, "Hours of Service of Drivers; On-Duty Time," *Federal Register* 57 (August 19, 1992): 37504.
- 7 Resume of Congressional Activity: First Session of the 110th Congress, Congressional Record (Daily Digest) (February 4, 2008): D80.
- 8 GAO Federal Rules Database, available at <http://www.gao.gov/fedrules/> (for all rules, choose "All" for Agency and leave other fields empty; for major rules, do the same except choose "Major" for Rule Type).
- 9 Cindy Skrzycki, *The Regulators* (Rowman & Littlefield Publishers, 2003), pp.7-10.
- 10 Environmental Protection Agency, "Clean Air Interstate Rule," *Federal Register* 70 (March 12, 2005): 25162. Although the U.S. Court of Appeals for the D.C. Circuit has found the rule flawed, it has permitted it to remain in effect while the EPA revises it. Felicity Barringer, "In Reversal, Court Allows a Bush Plan on Pollution," *The New York Times*, December 24, 2008.
- 11 Lisa Schultz Bressman, "Procedures as Politics in Administrative Law," *Columbia Law Review* 107 (2007): 1749, 1761-1763.
- 12 5 U.S.C. § 553; see also Michael Asimow, "Interim-Final Rules: Making Haste Slowly," *Administrative Law Review* (51) (1999): 703.
- 13 Jay Cochran, III, "The Cinderella Constraint: Why Regulations Increase Significantly During Post-Election Quarters" (Mercatus Center working paper 2001), available at [http://www.mercatus.org/Publications/pubID.4198\\_cfilter.0/pub\\_detail.asp](http://www.mercatus.org/Publications/pubID.4198_cfilter.0/pub_detail.asp); Sarah Cohen and Laura Stanton, "Comparing Presidential Action on Regulations," *The Washington Post*, August 15, 2004; Amy Goldstein and Sarah Cohen, "Bush Forces a Shift in Regulatory Thrust," *The Washington Post*, August 15, 2004; Jason M. Loring and Liam R. Roth, Note, "After Midnight: The Durability of the 'Midnight' Regulations Passed by the Two Previous Outgoing Administrations," *Wake Forest Law Review* 40 (2005): 1441; Anne Joseph O'Connell, "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," *Virginia Law Review* 94 (4) (2008): 889; OMB Watch, "The Bush Regulatory Record: A Pattern of Failure" (2004).
- 14 Nina A. Mendelson, "Agency Burrowing: Entrenching Policies and Personnel Before a New President Arrives," *New York University Law Review* (78) (2003): 557.
- 15 William G. Howell and Kenneth R. Mayer, "The Last One Hundred Days," *Presidential Studies Quarterly* (35) (2005): 533.
- 16 P.S. Ruckman, Jr., "Last-Minute' Pardon Scandals: Fact and Fiction" (working paper 2004), available at <http://www.rvc.cc.il.us/facilnk/pruckman/pardoncharts/Paper2.pdf>.
- 17 Although there is no consolidated information about the final few months of President George W. Bush's administration and even though there is usually a lag in the agency reporting that does exist, his cabinet and executive agencies issued roughly as many or more notices of proposed rulemaking in the first three quarters of 2008 as in any similar preceding period.
- 18 Curtis W. Copeland, "Midnight Rulemaking: Considerations for Congress and a New Administration" (Congressional Research Service RL34747, November 24, 2008), pp. 7-9; Anne Joseph O'Connell, "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," pp. 944, n.152, 959-963.
- 19 Anne Joseph O'Connell, "Let's Get It Started: What President-elect Obama Can Learn from Previous Administrations in Making Political Appointments" (Washington: Center for American Progress, 2009).
- 20 Data are available on the National Archives website; see The National Archives, Executive Orders Disposition Tables Index, available at <http://www.archives.gov/federal-register/executive-orders/disposition.html> (last visited March 19, 2008).
- 21 See "Memorandum for the Heads and Acting Heads of Executive Departments and Agencies," *Federal Register* 66 (January 24, 2001): 7702.
- 22 *Natural Resources Defense Council, Inc. v. Abraham*, 355 F.3d 179, 204-206 (2d Cir. 2004) (holding that the Department of Energy's suspension of the effective date of prior regulation did not comply with APA requirements); *Public Citizen v. Steed*, 733 F.2d 93, 99-105 (D.C. Cir. 1984) (holding that the NHTSA's indefinite suspension of treadwear grading requirements did not comply with the APA); *Natural Resources Defense Council, Inc. v. EPA*, 683 F.2d 752, 760-762 (3d Cir. 1982) (scrutinizing the EPA's indefinite postponement of amendments to pollution regulations for compliance with the APA's procedural requirements); *Council of Southern Mountains, Inc. v. Donovan*, 653 F.2d 573, 580-583 (D.C. Cir. 1981) (reviewing the DOL's postponement of implementation of mine safety regulations under the APA).
- 23 Jack M. Beermann, "Presidential Power in Transitions," *Boston University Law Review* 83 (2003): 947, 994 (noting that brief delays in effective dates of rules are typically legal). But see B.J. Sanford, Note, "Midnight Regulations, Judicial Review, and the Formal Limits of Presidential Rulemaking," *New York University Law Review* 78 (2) (2003): 801-807 (arguing that delays imposed by new presidents of effective dates of rules enacted at the end of the previous administration are illegal).
- 24 Beermann, "Presidential Power in Transitions," pp. 984 n.122, 993.
- 25 Jim Rossi, "Bargaining in the Shadow of Administrative Procedure: The Public Interest in Rulemaking Settlement," *Duke Law Journal* 51 (2001) (examining "rulemaking settlements" by outgoing and incoming presidential administrations).
- 26 Katharine Q. Seelye, "U.S. to Reassess Snowmobile Ban in a Park," *The New York Times*, June 30, 2001. See also Rossi, "Bargaining in the Shadow of Administrative Procedure: The Public Interest in Rulemaking Settlement," pp. 1039-1043.
- 27 Rossi, "Bargaining in the Shadow of Administrative Procedure: The Public Interest in Rulemaking Settlement," p. 1016.
- 28 Agency revision of a regulation likely must accompany any rulemaking settlement not to enforce it. See *Natural Resources Defense Council, Inc. v. EPA*, 683 F.2d 752, 766 (3d Cir. 1982); Rossi, "Bargaining in the Shadow of Administrative Procedure: The Public Interest in Rulemaking Settlement," p. 1040.

- 29 5 U.S.C. §§ 801-808; see also, L. Elaine Halchin, "Presidential Transitions: Issues Involving Outgoing and Incoming Administrations" (Congressional Research Service RL34722, October 23, 2008), pp. 6-8.
- 30 Curtis W. Copeland, "Midnight Rulemaking: Considerations for Congress and a New Administration" (Congressional Research Service RL34747, November 24, 2008), p. 15.
- 31 *Ibid.*, pp.14-15.
- 32 Jacob E. Gersen and Anne Joseph O'Connell, "Deadlines in Administrative Law," *University of Pennsylvania Law Review* 156 (2008): 923, 945.
- 33 U.S. General Accounting Office, "Aviation Rulemaking: Further Reform Is Needed to Address Long-Standing Problems" (GAO-01-821, 2001) (examining average duration of significant rulemaking from fiscal year 1995 through fiscal year 2000 by the Animal and Plant Health Inspection Service, or APHIS, EPA, FDA, and NHTSA and finding that "except for APHIS, which finalized all of its significant rules within 2 years of the close of the public comment period, agencies generally finalized between two-thirds and three-fourths of their significant rules within 24 months of the close of the public comment period"). See also Jason Webb Yackee & Susan Webb Yackee, "Is Federal Rulemaking 'Ossified'? The Effects of Congressional, Presidential, and Judicial Oversight on the Agency Policymaking Process" (working paper January 3, 2008), pp. 13-23 (analyzing duration of notice-and-comment rulemaking from 1983 to 2006).
- 34 See O'Connell, "Let's Get It Started: What President-Elect Obama Can Learn from Previous Administrations in Making Political Appointments."
- 35 Executive Order no. 12,866 (1993), as amended by Executive Order no. 13,422 (2007); see also Executive Order no. 12,291 (1981) (repealed by Executive Order no. 12,866).
- 36 Steven Croley, "White House Review of Agency Rulemaking: An Empirical Investigation," *University of Chicago Law Review* 70 (2003): 821, 848-849; Cornelius M. Kerwin, *Rulemaking: How Government Agencies Write Law and Make Policy* (CQ Press, 2003), p. 226.
- 37 See Letter from Susan E. Dudley, Administrator, Office of Information and Regulatory Affairs, to John J. Sullivan, General Counsel, U.S. Department of Commerce, October 30, 2007, available at [http://www.reginfo.gov/public/return/return\\_doc\\_20071030.pdf](http://www.reginfo.gov/public/return/return_doc_20071030.pdf).
- 38 The last two administrations have sent explicit directives to agencies to encourage regulatory action. See Nicholas Bagley and Richard L. Revesz, "Centralized Oversight of the Regulatory State," *Columbia Law Review* 106 (2006): 1260, 1277-1280; Elena Kagan, "Presidential Administration," *Harvard Law Review* 114 (2001): 2245, 2290-2299.
- 39 Ronald M. Levin, "Direct Final Rulemaking," *George Washington Law Review* 64 (1995): 1. Such rules are supported by some. For example see Office of the Vice President, "Improving Regulatory Systems: Accompanying Report to National Performance Review, at Recommendation" (1993), available at: <http://govinfo.library.unt.edu/npr/library/reports/reg.html>, p.5. Others oppose such rules. For example see Lars Noah, "Doubts about Direct Final Rulemaking," *Administrative Law Review* 51 (1999): 401.
- 40 Asimov, "Interim-Final Rules: Making Haste Slowly."
- 41 O'Connell, "Political Cycles of Rulemaking: An Empirical Portrait of the Modern Administrative State," pp. 929-937. See also Stuart Shapiro, "Presidents and Process: A Comparison of the Regulatory Process Under the Clinton and Bush (43) Administrations," *Journal of Law and Policy* 23 (2007): 393, 403.
- 42 Jacob E. Gersen and Anne Joseph O'Connell, "Deadlines in Administrative Law," pp. 956-959 (discussing various cases in the presence of statutory deadlines).
- 43 For conservatives, see, for example, Jay Cochran, "Clinton's 'Cinderellas' Face Regulatory Midnight," *USA Today*, December 13, 2000; Murray Weidenbaum, "Hold Those Midnight Rules," *Christian Science Monitor*, January 17, 2001; For liberals, see, for example, Al Kamen, "Placing Pryor Restraint on Republicans; Democratic Senator Warns Officials Against Transition Hanky-Panky," *The Washington Post*, November 5, 1992; Linda Sánchez, "Push Back Against The Dead Hand Of A Lame Duck," *Roll Call*, December 8, 2008.
- 44 See, for example, Beermann, "Presidential Power in Transitions," pp. 1004-1005. Several state constitutions prohibit legislators from introducing bills in the final days of the legislature's session. Adrian Vermeule, "The Constitutional Law of Congressional Procedure," *University of Chicago Law Review* 71 (2004): 361, 434-436.
- 45 The Administrative Procedure Act requires that agencies publish a rule, along with a "concise general statement of [the rule's] basis and purpose" at least 30 days before it becomes effective. See 5 U.S.C. § 553. The Congressional Review Act restricts major rules, typically those with more than a \$100 million impact on the economy, from taking effect for 60 days after they are issued.
- 46 The Unified Agenda is a primary source of rulemaking activity. The GAO keeps a similar database on completed rules under the Congressional Review Act using information reported by agencies. See 5 U.S.C. § 801(a). RISC also compiles counts of agency rules. Counts of rulemaking activity differ by government source. Steven P. Croley, *Regulation and Public Interests: The Possibility of Good Regulatory Government* (Princeton University Press, 2008), pp. 102-117. Although the primary source of information on agency rules, the Unified Agenda data have some disadvantages, including that individual agencies submit the data on their activities and that the reports miss many complexities of rulemaking (for instance, it is not possible to tell easily whether a rule is regulatory or deregulatory in nature).
- 47 All of these agencies are headed by a single Senate-confirmed appointee. Except for the IRS after 1998, the appointee serves at the will of the president and can be fired for any reason. The IRS Restructuring and Reform Act of 1998 set a five-year term of office for the IRS commissioner, which applied to the leader at the time as well, Charles Rossotti. The IRS is coded as an executive agency because most of the data here involve action prior to 1998 and because the IRS is often treated as an executive agency.
- 48 All of these agencies are led by appointees who serve fixed terms and typically can be removed by the president only for cause. The Social Security Administration became an independent agency under the Social Security Independence and Program Improvements Act of 1994.
- 49 Only the most recent entry in the Unified Agenda was retained for each RIN. This means that if an earlier entry for a RIN contained certain information but a later entry for that same RIN did not, that information would not be captured in the database. Thus, the analysis undercounts regulatory actions. The latest entry on a particular action is used on the assumption that it was the most reliable. The RIN is treated as a unique identifier. In practice, however, the RIN does change in rare cases.
- 50 Agencies can also report actions they intend to undertake, with predicted dates (which are represented with "00" in the day field). Those intended actions are excluded from the analysis unless they reappear in a later edition with an actual date.

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## About the author

Anne Joseph O’Connell is an assistant professor of law at the University of California, Berkeley, where she teaches administrative law. She has a J.D. from Yale Law School and a Ph.D. in political economy and government from Harvard University. Her primary areas of research are qualifications and tenure of agency officials; patterns of agency rulemaking; agency design and reorganization; and agency oversight, including congressional hearings and U.S. Government Accountability Office auditing of policy programs.

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