

## New President Has Some Powers To Overturn Regulations

President-elect Donald Trump made many, many promises during his campaign for the nation's top elected office. Among those was the promise to abolish many of the rules, regulations, executive order, and directives of President Obama.

Since the election, the legal community has investigated Trump's authority once sworn in to strike one, several, or all of the directives ordered by the Obama administration.

Travis Cushman, associate with the Washington law firm of Kelley Drye & Warren, conducted a webinar on the subject on Nov. 22. He said that executive orders issued by Obama are freely revocable, but regulations could present a more complicated problem.

Also, interpretive rules, policy statements, guidance documents and other regulatory documents can be easily revoked by the new administration, according to Cushman.

The new President can place a moratorium on new rules, withdraw proposed rules, postpone effective dates of rules. He also can propose changes to rules that have been finalized, but they must then go through the regulatory process all over again. Another weapon in the president's arsenal is to order regulators to not enforce the new rules, which can be controversial, he said.

Members of the House and Senate can pass legislation to rescind, amend, or delay implementation, but this can easily become bogged down with 435 members of the House and 100 members of the Senate involved in the process.

Cushman said Congress also can amend the statutory authority of the regulation or the agency involved in enforcement.

Members of Congress can simply deny funds to implement a regulation through the appropriation process. The appropriation process does not nullify the rule, and it is binding for that fiscal year only. Agencies can circumvent the appropriation process by obtaining funds from fees and other sources or simply requiring implementation by states.

The Congressional Review Act, enacted in 1990, requires that new regulations be submitted to the House and Senate and General Accounting Office before they take effect. Both chambers must reject the proposed rule along with the President in order to kill it. This has happened only once.

States and industry have filed numerous lawsuits against regulations already implemented by the current administration. One of those, the Clean Power Plan, was addressed in an analysis by David Rivkin Jr. and Andrew Grossman, who practice appellate and Constitutional law in Washington and represent the state of Oklahoma, which appeared in the Wall Street Journal.

Rivkin and Grossman believe that President Trump can immediately issue an executive order to adopt a new energy policy that respects the states' role in regulating energy markets. The order should direct EPA to cease all efforts to enforce and implement the Clean Power Plan. The EPA would then extend all of the regulation's deadlines, enter an administrative stay and commence regulatory proceedings to rescind the previous order.

Such actions would leave the courts with little choice but to send the legal challenges back to the agency, which would effectively strip EPA of its legal power to enforce the regulation, according to Rivkin and Grossman.

Of course, environmental groups will counter with lawsuits, but Rivkin and Grossman believe those would not be successful.

It definitely will be a new and different day at 1600 Pennsylvania Avenue when Donald Trump is sworn in on Jan. 20.



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