

# The Frequency of Regulatory Suspensions in the 21<sup>st</sup> Century

*Do Republican and Democratic Presidents Use Regulatory Suspensions  
at Different Rates?*

Mark Febrizio & Kekai Liu | July 13, 2021

## Abstract

Regulatory suspensions are tools for presidents to delay the effective or compliance dates of the prior administration’s rules. Analyzing regulatory data from the Federal Register, we demonstrate how the use of regulatory suspensions has varied from the presidencies of George W. Bush to Joe Biden. We find that Republican presidents utilize regulatory suspensions at a higher rate than their Democratic counterparts. In the 21<sup>st</sup> century, President Trump employed regulatory suspensions at the highest rate, while President Obama used them least frequently.

## Introduction

Since entering office in January, President Biden has been using [multiple mechanisms](#) to [reverse](#) Trump administration regulatory actions. [Regulatory suspensions](#)—actions that delay the effective or compliance dates for finalized rules—are one rollback method that the Trump administration also [aggressively used](#) by “suspending rules that [were] already effective and suspending rules indefinitely.” While not being a new feature in the rulemaking process, scholars have [argued](#) that presidents might use these postponements even more forcefully in the future.

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*[Mark Febrizio](#) is a policy analyst at the George Washington University Regulatory Studies Center. [Kekai Liu](#) is a graduate research assistant at the George Washington University Regulatory Studies Center.*

Understanding the frequency of regulatory suspensions across presidential administrations may help contextualize the usage of this tool of regulatory oversight. Using data from four recent presidential administrations over a comparable timeframe, we track the number of regulatory suspensions appearing in the [Federal Register](#) and describe several broader trends that appear. We find that Republican presidents in the 21<sup>st</sup> century use regulatory suspensions more frequently than Democrats do, even after accounting for regulatory activity in the midnight period.

## Identifying Regulatory Suspensions

Regulatory suspensions are a way to delay the date a rule takes effect or when compliance is required, giving newly inaugurated presidents time to formulate and pursue their policy on that issue. Presidents' chiefs of staff commonly issue a memorandum at the beginning of the new administration to freeze and review recent or pending regulations, including rules that have been published in the Federal Register but have not yet taken effect (see the memoranda under [George W. Bush](#), [Barack Obama](#), [Donald Trump](#), and [Joe Biden](#)).

Because such postponements are published in the Federal Register, we searched final rules from the beginning of each president's first term for keywords that indicate a rule's effective date or compliance date was delayed. Specifically, if a rule contained the words "delay" and either "effective date" or "compliance date," we flagged it as a regulatory suspension.<sup>1</sup> We limited our timeframe to roughly the first 100 days of each president's first term—January 20 to April 30—because this would capture a substantial chunk of the initial regulatory activity of a new administration and ensured that we had enough data for Joe Biden's first year in office. Since document-level data from the Federal Register only date back to 1994, we began our search for regulatory suspensions at the George W. Bush administration.<sup>2</sup>

In total, our method identified 227 out of 3375 final rules as containing regulatory suspensions from the last four presidential administrations (including President Biden).<sup>3</sup> Because some rules suspended the effective or compliance dates for multiple regulatory actions, we counted 264 total

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<sup>1</sup> Searching the full text of documents proved to be overly inclusive (i.e., picking up many false positives), so instead we focused on searching three particular fields from the [Federal Register API](#)—*title*, *action*, and *dates*—for those terms.

<sup>2</sup> While document-level data from the Federal Register is only available back to 1994, full issues of the Federal Register are available from [Govinfo](#) in PDF format. Extensive work would need to be done to identify and verify individual documents from these PDF files. We would need data from the beginning of 1993 to examine similar trends for Bill Clinton. In addition, to adjust for midnight rules from the previous president, as we do later in our analysis, we would need data on rules at the end of 1992. Thus, we limit our analysis to the most recent four administrations for this project.

<sup>3</sup> We also use the Federal Register API's functionality to filter out corrections, as we also did for the midnight rules retrieved. In addition, we identify rules issued by the outgoing president but published after he left office and omit those from the sample (e.g., a rule issued under Obama's DOT but published on January 20, 2017).

suspensions across the four administrations.<sup>4</sup> We conducted three robustness checks to verify the accuracy of our search method for regulatory suspensions.<sup>5</sup> Each check had an accuracy rate greater than 95 percent, suggesting that our method is sufficiently accurate to reliably establish the broader trends and magnitudes of how presidents use regulatory suspensions.

## Comparing Suspensions by Administration

Our data suggest that the use of regulatory suspensions has differed substantially across recent administrations. President Trump postponed the effective or compliance dates for the largest set of rules, 107 in the initial months of his first term, while his predecessor President Obama postponed the fewest regulations over the same amount of time (only 27). President Bush postponed 87 rules,<sup>6</sup> a considerable number of rules relative to the Democratic presidents. President Biden suspended roughly half as many rules as the Bush administration did (43).

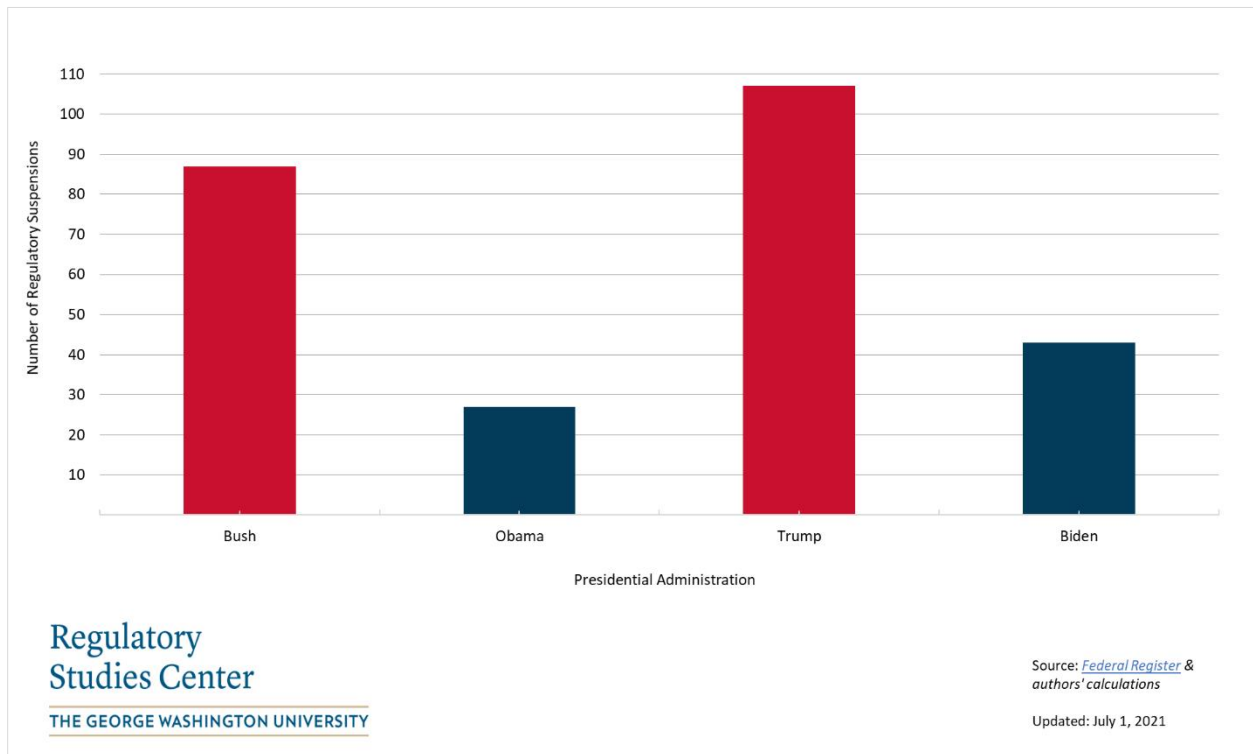
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<sup>4</sup> While conducting accuracy checks, we noticed that some regulatory actions delayed the effective date for multiple rules. In the *action* and *dates* columns, the multiple-rule suspensions would typically say “delay of effective dates” rather than “delay of effective date,” as well as refer to “each regulation.” To identify multiple-rule suspensions, we searched the 227 regulatory actions containing suspensions using a regex search for `\bdates\b\\beach\b` (i.e., “dates” or “each” with word boundaries at the beginning and end) in either the *dates* or *action* columns. We manually read the flagged regulatory actions and determined how many suspensions each included. Of the 12 observations that were flagged, 5 of them suspended multiple rules.

<sup>5</sup> First, we sampled 50 percent of the identified suspensions from each president (115 out of 227 rules), which had an accuracy rate of 95.7 percent (110/115 with 5 false positives). Second, we sampled 5 percent of the total rules published from January 20 to April 30 during the first year of each president (171 out of 3375 rules), producing an accuracy rate of 97.7 percent (167/171 with 1 false positive and 3 false negatives). Third, we sampled 5 percent of the rules from each President identified as non-suspensions via the search method (159 out of 3148 rules). The accuracy rate was 99.4 percent (158/159 with 1 false negative).

<sup>6</sup> Using a different methodology, a 2002 Government Accountability Office report identified 90 effective date delays by the Bush administration. Although not identical, we believe that the high level of similarity with our results suggests our method is highly accurate. See, GAO, “Regulatory Review: Delay of Effective Dates of Final Rules Subject to Administration’s January 20, 2001, Memorandum,” GAO-02-370R, published February 15, 2002, <https://www.gao.gov/products/gao-02-370r>.

Figure 1: Regulatory Suspensions by Administration



In general, Republican presidents have used the tool more readily, but is this because Democratic administrations have published a larger share of [midnight rules](#)? In other words, if a relatively large number of rules were issued at the very end of the previous administration, the incoming president might be expected to focus especially on undoing those policies—including by suspending regulations. Plus, midnight rules could be an easy target, given that scholars have [found](#) they tend to be of relatively [low quality](#). To account for this possibility, we retrieved data on all final rules published during the [midnight period](#) of the outgoing presidential administration (understood as occurring between election day and inauguration day). Table 1 reports the number of regulatory suspensions, midnight rules, and the ratio of regulatory suspensions to midnight rules for each administration.

Table 1: Regulatory Suspensions and Midnight Rules by Administration

President	Regulatory Suspensions	Midnight Rules from Outgoing President	Ratio of Suspensions to Midnight Rules
George W. Bush	87	954	0.091
Barack Obama	27	861	0.031
Donald Trump	107	841	0.127
Joe Biden	43	767	0.056
<b>Total</b>	<b>264</b>	<b>3,423</b>	<b>0.077</b>

The data suggest that overall midnight activity has been declining across the four recent presidential transitions. The most rules were published in President Clinton’s midnight period (954) and the fewest at the end of President Trump’s term (767). Further, the ratio of regulatory suspensions to midnight rules for each transition follows the same trend as the raw counts of suspensions.<sup>7</sup> Republican presidents have used suspensions at a higher rate than Democratic ones, even accounting for the amount of midnight rules issued by the previous administration.

Presidents have also postponed the same rule multiple times. This trend was arguably most noticeable under President Trump, when agencies [counted](#) subsequent effective date delays of the [same regulation](#) as deregulatory actions under Executive Order 13771. But examining the Federal Register data suggests that multiple delays are not a new phenomenon. To get a sense for how many rules get suspended multiple times, we tracked how frequently rules with the same “[Regulation Identifier Number](#)” (RIN) were delayed more than once by the same president.

Overall, 37 rules were postponed at least twice across all four presidents.<sup>8</sup> In 15 instances, the Trump administration delayed rules with the same RIN twice. The Bush, Obama, and Biden administrations did so 5, 8, and 9 times each, respectively. Notably, a third of the RINs that Trump postponed twice were Department of Energy (DOE) rules related to energy conservation standards

<sup>7</sup> We display the ratio of suspensions to midnight rules, rather than the percentage, because the suspensions in the numerator are not necessarily all found in the denominator too. For instance, a president could suspend a rule that was published before the midnight period began. Although less intuitive, we prefer to use a ratio to avoid giving the perception that we have verified that only midnight rules have been suspended.

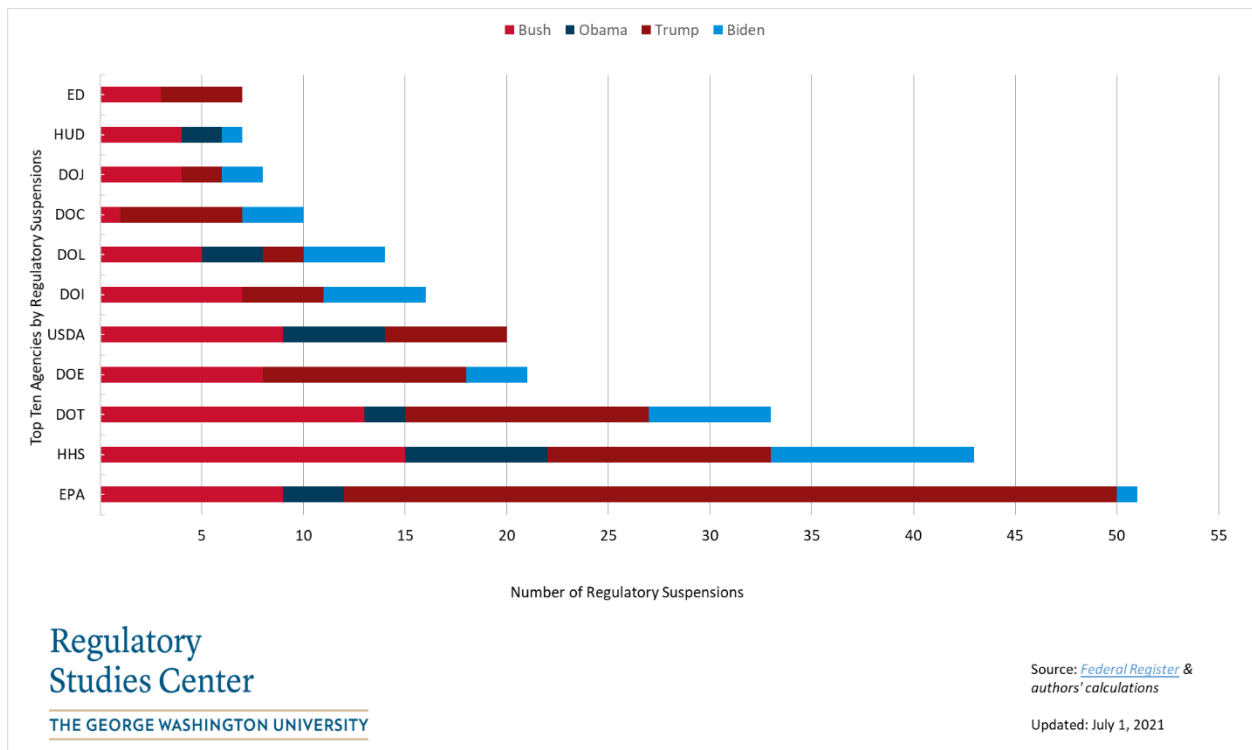
<sup>8</sup> More specifically, rules with 37 distinct RINs (or groups of RINs published together) were postponed at least twice in 75 Federal Register documents. Our approach—which tracks rules with the same RIN that were delayed—is likely an undercount of the actual number because not all rules are assigned a RIN by the Office of Information and Regulatory Affairs (OIRA).

(e.g., [1904-AD28](#), [1904-AD43](#), [1904-AD56](#), [1904-AD71](#), [1904-AD72](#)). Important factors driving this trend could include that Obama issued a plurality of DOE midnight rules (24 out of 52) and the statutory criteria for amending energy conservation standards contains an “[anti-backsliding](#)” provision that makes delaying a rule necessary if the standard is to be relaxed.<sup>9</sup> Beyond Trump’s DOE, such a stark pattern for a single agency does not appear for other presidents, although the Department of Health and Human Services (HHS) had the most rules delayed multiple times across all administrations.

## Agencies with the Most Regulatory Suspensions

Another important question revolves around whether certain agencies have their rules delayed more regularly than others. And given that Republican presidents use postponements more than Democrats, do they delay rules from different agencies too? Generally, presidents tend to delay the most rules from a few key agencies, but the ordering of those agencies sometimes differs. Figure 2 depicts the agencies with the most regulatory suspensions, differentiating the number issued under each president.

Figure 2: Agencies with the Most Regulatory Suspensions by President



<sup>9</sup> See, 42 U.S.C. 6295(o)(1). Available at: <https://www.govinfo.gov/content/pkg/USCODE-2019-title42/html/USCODE-2019-title42-chap77-subchapIII-partA-sec6295.htm>.

## *Regulatory Insight*

For departments with sub-agencies, we grouped regulatory suspensions by their issuing department (e.g., rules from the Centers for Medicare and Medicaid Services and FDA are categorized under HHS); rules from standalone agencies (e.g., rules from EPA) and independent regulatory agencies (e.g., rules from the Comptroller of the Currency) are grouped separately. Table 2 displays the agencies with the most cumulative regulatory suspensions across administrations (President Bush to President Biden). For each agency, Table 2 provides the cumulative number of midnight rules from the outgoing presidents (President Clinton to President Trump) and the percentage of regulatory suspensions and midnight rules issued under Republican presidents.

Table 2: Partisan Split for Agencies with the Most Regulatory Suspensions

Rank	Agency	Regulatory Suspensions	Midnight Rules	GOP Suspensions (%)	GOP Midnight (%)
1	Environmental Protection Agency (EPA)	51	415	92.2	40.2
2	Department of Health and Human Services (HHS)	43	213	60.5	39.9
3	Department of Transportation (DOT)	33	738	75.8	44.0
4	Department of Energy (DOE)	21	52	85.7	32.7
5	Department of Agriculture (USDA)	20	186	75.0	46.8
6	Department of the Interior (DOI)	16	110	68.8	51.8
7	Department of Labor (DOL)	14	74	50.0	52.7
8	Department of Commerce (DOC)	10	337	70.0	54.9
9	Department of Justice (DOJ)	8	74	75.0	50.0
10	Department of Education (ED)	7	27	100.0	44.4
10	Department of Housing and Urban Development (HUD)	7	51	57.1	41.2

The lists of top agencies by midnight rules and regulatory suspensions are similar but not identical, especially in terms of order. DOT has the largest share of midnight rules, issuing a whopping 738 final rules across four administrations during the midnight period, but EPA and HHS have noticeably more suspensions and fewer midnight rules. Further, DOE has relatively few midnight



rules but the third largest number of suspensions. Conversely, the Department of Commerce has the third most midnight rules (337) but relatively few regulatory suspensions (10).<sup>10</sup>

EPA has the most suspensions across all administrations, primarily due to one action from President Trump that delayed the effective date of 30 EPA regulations. Furthermore, over 90 percent of EPA suspensions are from Republican presidents, and at least three-quarters of the suspensions from several other top agencies were issued by GOP administrations. Of the top five agencies with the most suspensions, Republican presidents were responsible for the majority of suspensions, while Democrats issued a larger proportion of the midnight rules.

## Key Takeaways

In the 21<sup>st</sup> century, Republican presidents suspended more rules from their Democratic predecessors than the other way around. Even after accounting for the quantity of midnight rules issued by the outgoing president, the Bush and Trump administrations postponed rules at a noticeably higher rate than the Obama and Biden administrations. Republican presidents also seem more likely to delay rules from agencies that issue the majority of their midnight rules under Democrats. However, the broader reasons why the two political parties use regulatory suspensions differently is less clear.

Regulatory scholars, Bethany Davis Noll and Richard Revesz, have theorized about why both regulatory and deregulatory administrations might implement regulatory suspensions.<sup>11</sup> With President Trump in mind, they [suggest](#), “Suspensions can be useful to an administration interested in deregulation because a rule can be much harder to repeal once it is formally implemented.” For instance, once effective, repealing an energy conservation standard would be impractical because of its anti-backsliding requirements. Perhaps the general deregulatory bent of Republican administrations could explain why they use them at a higher rate. Nevertheless, there are also good reasons that pro-regulatory Democratic administrations would also use the tool, such as delaying a deregulatory action in order to [reinstate](#) a “formerly tighter regulatory standard.”

Finally, noticeable trends across agencies point to how underlying policy priorities inform the use of the tool. Several of the most active departments show up regularly in the data, but there is also variation depending on a president’s political party and policy objectives. Arguably, the number of midnight rules issued per agency is not the only predictive factor in explaining regulatory suspensions across agencies. A partisan back-and-forth also seems to be at play: Republican

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<sup>10</sup> Also, the Department of the Treasury, Department of Defense, and DHS are among the top agencies in terms of midnight rules but not in the top 10 of postponed rules.

<sup>11</sup> See, pp. 43-47 of their 2019 Minnesota Law Review, “Regulation in Transition,” available at SSRN: <https://ssrn.com/abstract=3348569>.

administrations generally suspend the most rules from agencies that issued a larger proportion of midnight rules under Democratic presidents.

## Setting the Stage for Future Analysis

Although not comprehensive or definitive, we hope this article will be a launching point for future empirical analyses of regulatory suspensions. These data from the Federal Register provide a reliable picture of the relative frequencies and magnitudes of postponed rules at the beginning of four presidential terms. In the future, we anticipate extending the timeframe for analysis through the first year of each administration, which could shed more light on the pace of regulatory suspensions during the “sunrise” period of a new administration.

We are also interested in distinguishing between suspensions that eventually led to rule changes from those that were allowed to go into effect as published by the preceding administration, albeit with a delayed date. Because suspensions essentially give an administration time to decide whether to undertake all the steps of revising or revoking a rule, how many regulatory suspensions culminate in actual change? What ultimately happens to the rules that are delayed?

Finally, going beyond the frequency of suspensions, additional work is needed on how the composition of postponed rules differs across administrations. How might a rule’s statutory authority influence its likelihood of suspension? Does a rule’s significance under Executive Order 12866 affect whether it is delayed? Given that President Trump used regulatory suspensions [more aggressively](#) than his predecessors, do the [outcomes in court](#) for effective date delays under Trump systematically differ from other presidents? To aid researchers in answering these or similar questions, we are making our [data and methods](#) publicly available.