

Regulatory Terms to Know

Terms to Know	Laws and Offices to Know	Potential Judicial Actions
<p>Economically Significant: A proposed rule will be “economically significant” if the Office of Information and Regulatory Affairs (OIRA) determines that the rule is likely to have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. When a rule is deemed economically significant, the agency must provide additional costs and benefits analysis to justify their actions with the rulemaking.</p> <p>Federal Register: The Federal Register is the daily newspaper of the federal government and the venue where agencies share information about their activities. The Register includes Presidential Documents, Rules and Regulations, Proposed Rules, and Notices.</p> <p>Guidance: Agencies will frequently issue guidance on a topic, which allows the agency to share information or thoughts without having to go through the formal rulemaking process, which involves publication for notice and comment by the general public. Guidance can be a point of clarification, provide information that addresses a new development in the topic, or hint at future action, for example.</p> <p>→ Rescission of Guidance A new Administration can rescind previously issued guidance.</p>	<p>Administrative Procedure Act (APA): The APA was passed in 1946 and outlines the way federal agencies propose and create rules. This is also where procedures for public notice and comment are defined, in addition to the availability of judicial review for certain agency actions. In an attempt to overturn certain regulations, agencies are often attacked for violating the APA in court.</p> <p><i>The APA may come under fire as many lawmakers want to make changes to it to reduce the autonomy that was granted to agencies via the APA and the traditions of rulemaking that have emerged over time.</i></p> <p>Congressional Review Act (CRA): The CRA was passed in 1996 and creates a 60 session day window where a majority of both houses can review a final rule, issue a joint resolution of disapproval, and send the rule back to the President. The President can then sign or veto the CRA, which could essentially prohibit the agency from reissuing the disapproved of rule or any rule that is substantially similar.</p> <p><i>The CRA may come into play as Republicans and other outgoing lawmakers try to stop any late-term Obama administration rules (issued after May 16, 2016) from going into effect. The CRA does not have a strong track record of success as it is unlikely that a President would veto a rule issued by their own administration and typically is only an option when there is a shift in party of the President.</i></p>	<p><i>The APA directs judicial review for many agency activities. The court of jurisdiction for these disputes is a federal appeals court. There are several ways an issue may reach the court, and several ways it may be resolved. Some frequently used terms are below.</i></p> <p>Appeal: An agency’s decision may be appealed to a higher court. An aggrieved party or group of parties may file a lawsuit in a higher court demanding review of the agency’s actions.</p> <p>Injunction: This is the ‘red light’ in a dispute. The party against whom the injunction is issued, typically the agency, is prohibited from moving forward with its plans.</p> <p>Stay: This is the ‘pause button’ in a dispute, it is a temporary hold in the proceedings. Often the court is waiting for something else to happen, such as a survey to be completed or another lawsuit to be resolved.</p>

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<p>Full Regulatory Review: This is a full regulatory review of a rule that could be at any stage, including an existing rule already in effect (retrospective review). This tool gives a new Administration the chance to review the Agency’s work using its perspective on the issue and could result in a new final rule being issued.</p> <p>Midnight Regulation: Regulations pushed through toward the end of an Administration’s term are referred to as midnight regulations, because of the late timing of issuance and the hope of the Administration to leave its legacy. Any rule pushed through during this time would still be subject to judicial review and/or any actions of the incoming Administration.</p> <p>Stay of Effective Date: Each final rule has a date upon which it will take effect. Agencies or courts may put that start date on hold, issuing a stay, postponing the effective date of the rule. A new Administration may place all new rules on a stay, delaying their implementation.</p>	<p>Office of Information and Regulatory Affairs (OIRA): OIRA is an office within the OMB. OIRA’s role is to oversee agencies’ budgets and to review draft and final rules. OIRA also approves government collections of information from the public under the <i>Paperwork Reduction Act</i> and helps enforce the <i>Small Business Regulatory Enforcement and Fairness Act (SBREFA)</i> that examines the economic impact of certain rules on small businesses.</p> <p>Office of Management and Budget (OMB): The OMB is part of the Executive Offices of the President, and is charged with reviewing agency actions, the annual budget, and ensures that agency activities and priorities are in line with the President’s priorities.</p> <p><i>The OMB is the ‘agency’s agency’ as it is responsible for oversight of all agencies. Because of its role within the Executive branch, it is likely that any attempts to weaken the APA and/or the agencies would go through OMB.</i></p>	