

ALERT

Taking Stock of the Trump Administration's Regulatory Freeze

January 24, 2025

On January 20, 2025, President Trump issued a Presidential memorandum entitled Regulatory Freeze Pending Review (Freeze Order). This action is unsurprising, as previous Presidents have consistently issued similar memoranda at the onset of their administrations, often through their chiefs of staff. The intent of the Freeze Order is to pause and enable review of recent regulatory activity as administrative agencies transition to new leadership.

The Freeze Order directs all "executive departments and agencies" to (1) refrain from proposing or issuing any rule until a department or agency head appointed by President Trump reviews and approves of the rule; (2) immediately withdraw any rules that have been sent to the Office of the Federal Register (OFR) but have not yet been published; and (3) consider postponing for 60 days from the date of the Freeze Order the effective date of any rules that have been published in the Federal Register but have not yet taken effect.

In addition to slowing regulatory activity generally, the Freeze Order may impact the timing, or even the fate, of certain regulatory actions taken at the end of the Biden Administration – particularly as related to controversial items. Below, we give a high-level view of the scope and potential implications of the Freeze Order across different industries, including potential impacts on the U.S. Department of Justice's (DOJ) bulk data transfer rule and long-awaited Foreign Agents Registration Act (FARA) changes; the Bureau of Industry and Security's (BIS) recent rulemakings on drones, connected vehicles, and artificial intelligence (AI); the Federal Communications Commission's (FCC or Commission) potentially controversial CALEA NPRM and Declaratory Ruling; and recent activity by the Federal Trade Commission (FTC or Commission) and Consumer Financial

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Practice Areas

Administrative Procedure
Connected & Autonomous Vehicles
Foreign Agents Registration Act (FARA)
Government Contracts
International Trade
National Security

Protection Bureau (CFPB or Bureau), among others.

Privacy, Cyber & Data Governance
Strategic Competition & Supply Chain
Telecom, Media & Technology
Uncrewed Aircraft Systems (UAS)

Scope of the Freeze Order

Agencies Covered. The Freeze Order applies to “executive departments and agencies,” which is not defined. The Order could be read to cover so-called “independent” agencies, such as the FCC and FTC, although historically Executive Orders and Presidential memoranda have merely “encouraged,” and not directed, these agencies to take specific actions. In any event, the recently or soon-to-be appointed agency heads will likely take actions consistent with the Freeze Order. And the FCC has undertaken regulatory review consistent with freeze orders during past administrations.

Types of Regulatory Actions Covered. The Freeze Order applies to “rules,” but that term is defined broadly to capture a wide range of agency items, including:

- “Rules” as defined under the Administrative Procedure Act (APA);
- “Regulatory actions” as defined in Executive Order 12866 (“any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking [(ANPRM)], and notices of proposed rulemaking [(NPRM)].”); and
- “Guidance documents” as defined in Executive Order 13891 (“any agency statement of general applicability and future effect that sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue.”).

Scope of Regulatory Review. As noted above, new agency heads (or their delegates) must review and approve any rules yet to be proposed or issued as well as any rules that had gone to OFR but were not yet published. With respect to published rules that are not yet effective, the purpose of the encouraged 60-day postponement is to enable the agency to “review[] any questions of fact, law, and policy that the rules may raise.” The Order further directs agency heads to consider opening comment periods to consider any such issues. Rules that do not raise such issues can go into effect, while those that do may be “further delayed.”

Department of Justice

Bulk Personal Data and Government-Related Data Transfer. On January 8, 2025, DOJ issued a final rule implementing President Biden's February 2024 Executive Order 14117 (EO) on *Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern*. (As of the time of publication, the EO remains in effect.) DOJ's Final Rule prohibits and restricts a broad range of data transactions with certain countries or persons, and adopts significant compliance requirements for affected entities. Under the Freeze Order, the rule's effective date of April 8, 2025 potentially could be postponed for at least 60 days. For more information about DOJ's proceeding, see Wiley's previous client alert.

FARA. On January 2, 2025, and more than three years after publishing its ANPRM, the DOJ published in the Federal Register its highly anticipated proposed changes to FARA's implementing regulations. Comments are due March 3, 2025. These regulations, which are set forth in 28 CFR Part 5, have not been amended since 2007. While some of the proposed changes focus on the more mundane (e.g., filing requirements), others are more substantive, and would mark a significant departure from DOJ's prior regulatory approach and interpretation. Among the most important of these proposed changes are those to the Commercial exemption to FARA registration. For instance, with respect to Section (d)(1) of this exemption, which exempts from FARA registration "private and nonpolitical activities in furtherance of the bona fide trade or commerce of such foreign principal," DOJ proposes to allow foreign agents engaged in *bona fide* recreational or business travel promotion to qualify for the exemption, something DOJ has not permitted for decades. While the changes to FARA's implementing regulations have already been published in the Federal Register, and are only proposed, the regulatory freeze could result in an extension of the comment period and delay the issuance of any Final Rule. The Freeze Order does not specifically mention comment deadlines, but given that it applies to NPRMs, agencies may take the position that comment deadlines are sufficiently comparable to an "effective date" for the NPRM to merit postponement.

U.S. Department of Commerce Bureau of Industry and Security

BIS issued several items in January that may be impacted by the Freeze Order. The agency's Final Rule on connected vehicle supply chain issues was published on January 16, 2025, and is slated to go into effect on March 17, 2025. As we previously explained, the item prohibits certain transactions related to vehicle-related communications technology produced by entities in China or Russia, and imposes new compliance obligations on entities that import or sell that technology. While the effective date may be postponed to enable Department review, compliance is not required with the item until vehicle model year 2027 at the earliest. BIS also has already-effective items with pending comment deadlines, including its ANPRM on unmanned aircraft supply chain issues (comment deadline March 4, 2025, and discussed in our podcast [here](#)) and its AI Framework for Artificial Intelligence Diffusion, an interim final rule (IFR) modifying and expanding export controls on advanced computing integrated circuits and AI models. The IFR has a comment and compliance deadline of May 15, 2025, which could see postponement depending on how the Freeze Order is interpreted. With respect to the AI Framework rule, we could see the Trump Administration modify certain elements of the IFR in response to significant industry concern.

Federal Communications Commission

To the extent the FCC follows the Freeze Order, the Commission's recent item on the Communications Assistance for Law Enforcement Act (CALEA) almost certainly will be impacted. Adopted on January 15, 2025, and not yet published in the Federal Register, the CALEA NPRM and Declaratory Ruling announces new interpretations about cybersecurity-related obligations under CALEA and proposes to require covered providers to submit annual certifications related to cybersecurity and supply chain risk management. FCC Chairman Brendan Carr, then a Commissioner, dissented from the item. He has not issued an official public statement describing his grounds for dissent, but in a social media post, characterized the item as a "partisan & counterproductive approach." Given the directive of the Freeze Order, Chairman Carr will likely not send the item to OFR for publication immediately (or will withdraw it if it has been sent), but from there the process is unclear. While Chairman Carr could order a bureau within the Commission to open a comment period, any action involving a new NPRM or declaratory ruling, or *sua sponte* reconsideration of the item, would require a Commission vote and thus may be stalled due to the Commission's current 2-2 composition. Additionally, the NPRM portion of the item asserts that the declaratory ruling portion is "effective immediately," raising questions about whether the item being withheld from the Federal Register has any impact at all on whether carriers are bound by it.

The Commission has other pending items, although these are less likely to be significantly impacted due to Chairman Carr's vote to approve them as Commissioner. These include the Submarine Cable Landing License NPRM adopted on November 21, 2024 (summarized [here](#)), which has not yet been published in the Federal Register and for which publication will likely be delayed as the FCC conducts regulatory review. In addition, final rules that have yet to take effect, including Spectrum Rules and Policies for the Operation of Unmanned Aircraft Systems (effective February 7, 2025 and summarized [here](#)) and the Resilient Networks; Disruptions to Communications Final Rule (effective February 20, 2025), could see their effective dates postponed for up to 60 days for review, but are unlikely to be impacted further.

Finally, on January 24, 2025, and likely as a result of the Freeze Order, the FCC's "Items on Circulation" list (identifying regulatory actions for which votes are pending at the Commission) was cleared of all items.

Federal Trade Commission

The FTC will also need to determine how broadly to apply the Freeze Order, particularly given the high volume of regulatory announcements in the weeks preceding January 20. For example, on January 16, 2025, the FTC adopted final changes to the Children's Online Privacy Protection Act (COPPA) Rule (summarized [here](#)), which has been submitted to OFR but not yet published. To the extent the FTC follows the Freeze Order, the COPPA Rule could be withdrawn from OFR for review by the Commission. At the time it was announced, then-Commissioner and now-Chairman Andrew Ferguson issued a concurring statement identifying concerns with the rule that he urged the Commission to fix moving forward. However, it is not clear that a new comment period necessarily would be opened prior to the publication of the revised COPPA Rule as adopted.

Consumer Financial Protection Bureau

At the time of this publication, President Trump has not yet appointed a new director to the CFPB. However, the Bureau has a number of pending rulemakings that could be impacted by the Freeze Order, including the Electronic Fund Transfers Through Accounts Established Primarily for Personal, Family, or Household Purposes Using Emerging Payment Mechanisms NPRM (comments due March 31, 2025), the Prohibited Terms and Conditions in Agreements for Consumer Financial Products or Services (Regulation AA) NPRM (comments due April 1, 2025), the Fair Credit Reporting Act (Regulation V); Identity Theft and Coerced Debt ANPRM (comments due March 7, 2025), and the Protecting Americans From Harmful Data Broker Practices (Regulation V) Proposed Rule (comments due March 3, 2025). We will continue to monitor and provide updates on CFPB activity.

Government Contracts-Related Proceedings

Although there are a handful of rules affecting government contractors that could technically fall within the scope of the Freeze Order, as a practical matter, the Freeze Order may not have a significant impact on these rules given the nature of the issues being addressed, which are either required by statute or reflect policy areas where the new and old Administrations are largely in agreement. For example, the Federal Acquisition Regulatory Council (FAR Council), which is comprised of the U.S. General Services Administration (GSA), the U.S. Department of Defense (DOD), and the National Aeronautics and Space Administration (NASA), recently issued two significant proposed revisions to the Federal Acquisition Regulation (FAR): Preventing Organizational Conflicts of Interest in Federal Acquisition (see our client alert [here](#)) and Controlled Unclassified Information. Because neither proposed rule has been finalized and published as a final rule in the Federal Register, they are technically within the scope of the Freeze Order. Nevertheless, both are likely to move forward in some form. The Organizational Conflict of Interest rulemaking is required by statute, and the Controlled Unclassified Information rulemaking originated with the Obama Administration's Executive Order 13556, Controlled Unclassified Information (which has not been rescinded as of the date of publication of this alert) and a 2016 final rule from the National Archives and Records Administration. Similarly, DOD's expected rulemaking to implement the Cybersecurity Maturity Model Certification (CMMC) program, which we covered [here](#) and [here](#), implements a program that began under the first Trump Administration, and also continues the Government's focus on contractor cybersecurity, and therefore is also likely to move forward in some form despite the Freeze Order.

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