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*Taking Care that Presidential Oversight of the Regulatory Process is Faithfully Executed: A Review of Rule Withdrawals and Rule Suspensions Under the Bush Administration's Card Memorandum*

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Abstract by Heather Sidwell

The increase in rulemaking by agencies during the last few months of an outgoing administration followed by an incoming administration's withdrawal and suspension of those rules has become a familiar, if not inevitable, post-election phenomenon. The "Card Memorandum," issued on January 20, 2001, by the incoming White House Chief of Staff Andrew Card, represents the third instance in which an incoming administration has ordered the withdrawal of pending regulations or the delay of effective dates of published regulations.

This comment examines the legal and policy implications of the Bush Administration's Card Memorandum by first identifying the rules and agencies affected by the withdrawal provisions of the Card Memorandum. The author analyzes the Card Memorandum's withdrawal provision to determine the legitimacy of such a directive and concludes that the withdrawal of unpublished rules is permissible.

The author also examines the postponement of the effective dates of final rules published in the *Federal Register*, agencies' reliance on the rule of procedure exemption under 5 U.S.C. § 553(b)(A) and the good cause exemptions of 5 U.S.C. §§ 553(b), 553(d)(3), and whether notice and comment is required for certain rule suspensions. This comment concludes that the procedural and good cause exemptions cannot be used in a blanket fashion to excuse notice and comment rulemaking.

Finally, the author suggests three principal ways to improve regulatory review by an incoming administration relating to the use of withdrawals and suspensions. First, Office of Information and Regulatory Affairs (OIRA) must implement a system for tracking withdrawn and delayed rules as well as a means to make that information available to the public. Second, successive administrations should consider imposing a sixty-day delay on the amount of time a rule may be withdrawn from the *Federal Register*; any rules not reviewed within this timeframe would be published. Third, incoming administrations should not order the delay of effective dates of rules without directing the agencies to evaluate each rule on a case-by-case basis.