



The Trump Administration's Final Regulatory Stand

In the final months of the Trump presidency his Administration sought to publish as many midnight regulations as possible to preserve its immigration policy legacy. While it published a record number of final regulations in its final months, the Trump Administration was not able to finalize them all. This list serves as a companion document to AILA's [Trump Policies That May Be Finalized Before Inauguration Day 2021](#), to identify what regulations were finalized by Inauguration Day. As the status of these regulations may change due to pending litigation or additional rulemaking, you can stay up to date on these Executive Actions on [AILA's Tracking Notable Executive Action](#) webpage (*AILA Doc. No. 20091615*).

Rules that were published as final between August 21, 2020,¹ and Inauguration Day. The following midnight regulations were published as final before the Trump Administration left office on January 20, 2021. These rules are in effect unless rescinded through subsequent rulemaking, set-aside by a court, or vacated by Congress through the Congressional Review Act. The effective date of rules that were published before Inauguration Day, but take effect after, could be further delayed by the Biden administration upon additional rulemaking pursuant to the January 20, 2021 [White House Memorandum Freezing Regulatory Action](#) (*AILA Doc. No. 21012090*). Rules subject to this provision are indicated by (***)

- [CDC Rule Finalizing Interim Final Rule on Foreign Quarantine](#) - 85 FR 56424 (Proposed 9/11/20, Effective 10/13/20).
- [USCIS Temporary Final Rule on Interpreters at Asylum Interviews](#) - 85 FR 59655 (Effective 10/13/20).
- [DHS Final Rule Exempting "ALL-038 Insider Threat Program" System of Records from Privacy Act](#) - 85 FR 62933 (Effective 10/6/20).
- [EOIR Interim Final Rule Creating Chief Administrative Law Judge Position for OCAHO](#) - 85 FR 63204 (Effective 10/7/20).
- [DOJ Interim Final Rule on Issuance and Use of Guidance Documents](#) - 85 FR 63200 (Effective 10/7/20).
- [CDC Rule Finalizing Interim Final Rule on Foreign Quarantine](#) - 85 FR 16559 (Effective 10/13/20)
- [Final Rule on Organization of EOIR](#) - 84 FR 44537 (Effective 11/3/20).

¹ AILA has limited the list of finalized midnight regulations to those in the Congressional Review Act (CRA) "look back" period. The CRA allows Congress to review "major" rules issued by federal agencies before the rules take effect. Congress may also vacate new rules by a simple majority joint resolution (and are not subject to filibuster) if the rules were issued within the last 60 legislative calendar days of a session. 5 U.S.C. § 802. For 2020, the review period is for rules issued on or after [August 21, 2020](#) and Congress may act within the first 60 legislative days of the new session.

- [USCIS and EOIR Final Rule on Bars to Asylum Eligibility](#) - 85 FR 67202 (Original effective date 11/20/20; currently enjoined).
- [DOL Final Rule on Adverse Effect Wage Rate Methodology for Non-Range H-2As](#) - 85 FR 70445 (12/21/20; currently enjoined).
- [DOS Temporary Final Rule Creating Visa Bond Pilot Program](#) - 85 FR 74875 (Effective 12/24/20).
- [Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review](#) - 85 FR 80274 (Original effective date 1/11/2021; currently enjoined).
- [EOIR Final Rule on Procedures for Asylum and Withholding of Removal](#) - 85 FR 81698 (Effective date of 1/15/21, enjoined on 1/14/21).
- [EOIR Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure](#) - 85 FR 52491 (Effective 1/15/21).
- [Joint DHS/DOJ Asylum Eligibility and Procedural Modifications \(Third Country Transit Ban\)](#) - 84 FR 33829 (Effective 1/19/21).
- [EOIR Final Fee Rule](#) - 85 FR 11866 (Effective date 1/19/21, partially enjoined on 1/18/21).
- *** [DHS/USCIS H-1B Wage-Based Lottery Final Rule](#) - 86 FR 1676 (Effective March 9, 2021).
- *** [DHS/DOJ Proposed Rule on Security Bars and Processing](#) - 85 FR 41201 (Original effective date of 1/22/21 delayed until 3/22/2021).
- *** [Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States](#) - 86 FR 3608 (Effective date of 3/15/21; DOL has proposed a delayed effective date until 5/14/2021.).

Rules that Were Not Finalized by the Trump Administration by Inauguration Day. Although the Trump Administration pressed forward with many regulations in its final months, it was unable to finalize a number of rules in time. Pursuant to the January 20, 2021 [White House Regulatory Freeze Memoranda](#), rules that were not finalized were paused until a political appointee has reviewed and approved the rule. Any action that was pending review at the Federal Register on January 20, 2021 was to be withdrawn immediately, as well.

Rules that have been affirmatively withdrawn as per the Regulatory Freeze Memo:

- [DOJ/EOIR Final Rule on Jurisdiction and Venue in Removal Proceedings](#) 72 FR 14494 - WITHDRAWN on 1/21/2021.
- [DHS USCIS Security Bars and Processing due to COVID-19 Final Rule](#) WITHDRAWN on 1/26/2021.
- [DHS Special Immigrant Juvenile Petitions Final Rule](#) 84 FR 55250, 10/16/19: WITHDRAWN on 1/26/2021.
- [DHS/USCIS Proposed Rule on Provisional Waivers](#) - WITHDRAWN on 1/25/2021.
- [DHS/USCIS Proposed Rule Rescinding H-4 EADs](#) - WITHDRAWN on 1/25/2021
- [DHS/USCIS NPRM Elimination of Employment Authorization for individuals with Orders of Removal](#) - 85 FR 74196 WITHDRAWN 1/26/21

- [DHS/CBP Proposed Rule on B Visas](#) – WITHDRAWN 1/26/21
- [DHS/ICE Interim Final Rule on SEVP Certified Schools Agreements with Confucius Institutes](#) - Withdrawn 1/26/21
- [DHS/ICE Proposed Rule on SEVP Fees](#) – WITHDRAWN 1/26/21
- [DOL/ETA Proposed Rule on H-2A Herding and Range Livestock Adjudications](#) - WITHDRAWN 1/21/21.
- [STATE Final Rule on Summer Work Travel Exchange Visitor Program](#) – Withdrawn 1/20/21.
- [STATE Proposed Rule on Fees for Consular Services](#) – WITHDRAWN 1/20/21.
- [DHS and DOL Direct Final Rule to Extend Discretionary Secretary of Labor Review to H-2B BALCA Cases](#) - 86 FR 1; WITHDRAWN 2/1/21.

Rules that were not finalized by the Trump Administration, but have not been formally withdrawn by the Biden Administration:

- [DHS/USCIS Proposed Rule on the Use and Collection of Biometrics](#), 85 FR 56338, 9/11/20.
- [DHS/ICE Elimination of Duration of Status Rule](#); 85 FR 60526, 9/25/20; (Comment period closed on 10/26/20; 32,083 comments received).
- [DOJ/EOIR Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances](#); 85 FR 61640, 9/30/20; (Comment period closed on 10/30/20; 41 comments received).
- [DHS/USCIS Affidavit of Support Proposed Rule](#), 85 FR 62432, 10/2/20. (Comment period closed on 11/2/20; 326 comments received).
- [DOS NPRM Eliminating B-1 in lieu of H-1B](#) - 85 FR 66878, 10/21/20; (Comment period closed on 12/21/2020; 13 comments received).
- [DHS/CBP Proposed Rule Collection of Biometric Data from Aliens Upon Entry to and Departure from the United States](#) - 85 FR 74162, 11/19/20 (Comment period closed on 12/21/20; 51 comments received).
- [DOJ/EOIR Notice of Proposed Rulemaking to Define “Good Cause”](#), 85 FR 75925, 11/27/20 (Comment period closed on 12/28/20; 666 comments received).
- [DOJ/EOIR Notice of Proposed Rulemaking on Motions to Reopen, Motions to Reconsider, and Stays of Removal](#), 85 FR 75942, 11/27/20 (Comment period closed on 12/28/20; 467 comments received).
- [DOJ/EOIR Executive Office for Immigration Review Electronic Case Access and Filing](#), 85 FR 78240, 12/4/20 (Comment period closed 1/4/21; 4 comments received).
- [DHS Strengthening the H-1B Nonimmigrant Classification](#) - 85 FR 63918 (Original effective date 12/7/20; Set aside on procedural grounds by a Court, DHS attempted to publish a modified version of it prior to Inauguration Day).