

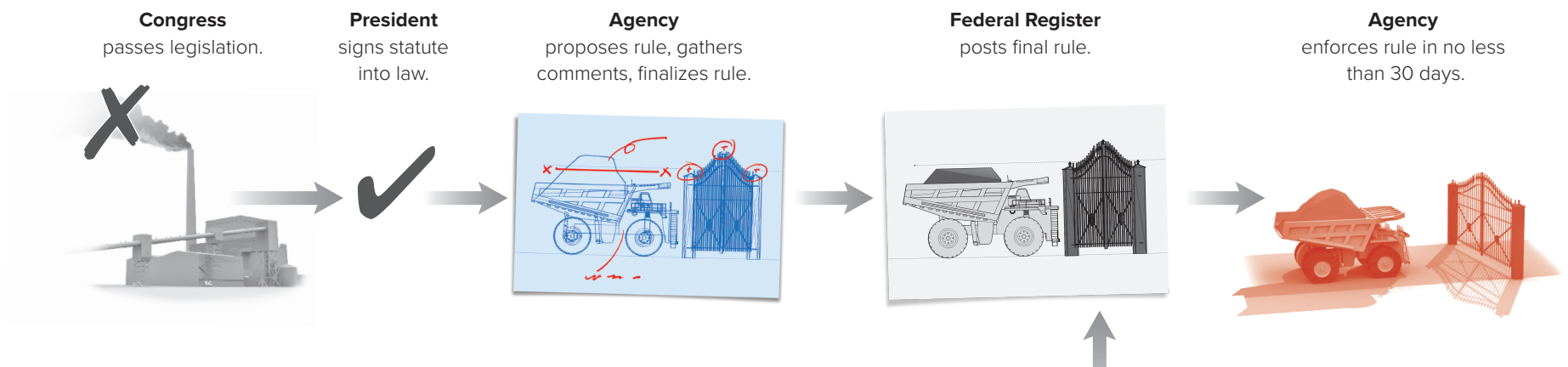
Nov. 15, 2016

The Difficulty with Killing Regulations

President-elect Donald Trump has said that on Day One of his administration, “I will direct every agency in government to begin identifying all wasteful job-killing regulations and they are going to be removed.” Maybe so, but those rules won’t disappear overnight. In fact, it might take a year or longer before any changes happen, and those could get stalled or negated by legal challenges.

Making Rules

After Congress enacts legislation and the president signs a bill, a federal agency must then enforce the law by developing regulations, or rules. Proposed rules are reviewed by the Office of Management and Budget, published in the Federal Register and opened for public comment. The rule is finalized and again sent through the OMB before it is published in the Code of Federal Regulations. Some statutes require “formal rulemaking” involving public hearings presided over by an administrative law judge, whose ruling forms the new regulation. The validity of any rule can be challenged in court.



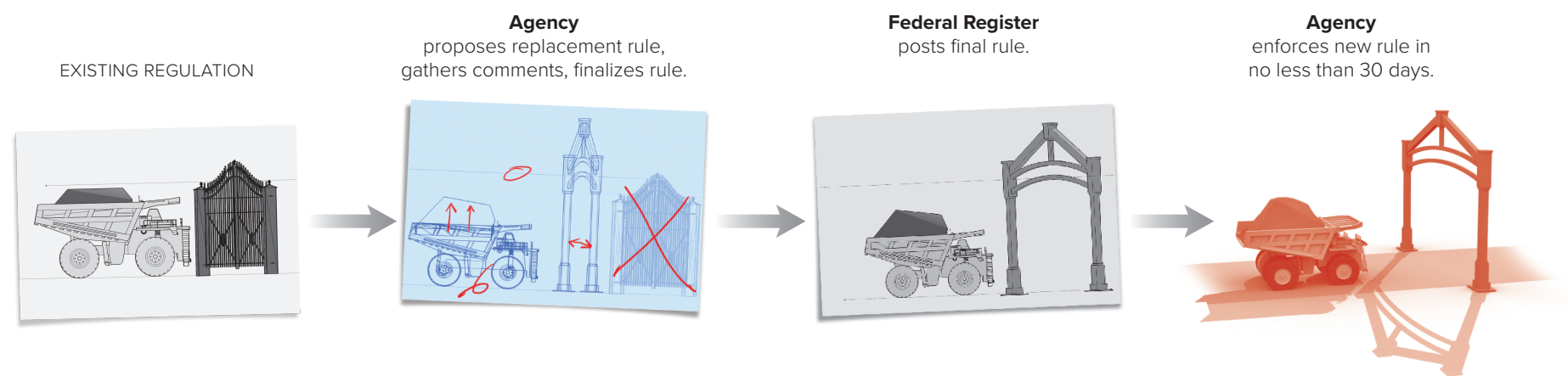
Squashing Rules

If Congress is not pleased with a new regulation, both houses can vote to kill the rule within 60 legislative working days of its publication. However, the president can veto the measure, keeping the rule in place, but with enough votes, Congress can override the president’s veto.



Changing Rules

Regulations that have been on the books for longer than 60 legislative days are cemented in place. For an agency to change a regulation, it must restart the entire rulemaking process, proposing a replacement rule and providing justification for the need to replace the existing rule. Such replacement rules are vulnerable to legal challenges.



Circumventing Rules

A president can refuse to enforce regulations by using prosecutorial discretion; however, the regulations remain on the books and can be enforced by a successor. Some lawmakers regard this sort of circumvention as unconstitutional executive lawmaking.

Instead of vetoing laws that they don’t agree with, presidents will sometimes sign legislation into law and issue signing statements saying that certain elements of the law are unconstitutional and will not be enforced.

