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FACT SHEET

THE CONGRESSIONAL REVIEW ACT: A BLUNT INSTRUMENT

The Congressional Review Act (CRA) was enacted by Congress on March 29, 1996 as part of the "Contract with America Advancement Act."

Congress has always had the power to create, modify or eliminate rules using the regular legislative process. The CRA provides a more extreme tool by creating a procedure that can be used *only to repeal a rule in its entirety*. It provides a straight up or down vote on whether the rule should exist, using an expedited timeline, preventing use of normal Senate procedures and requiring only a simple majority to pass a resolution of disapproval.

Most significantly, passage of a CRA resolution to repeal a rule *blocks an agency from ever issuing any "new rule that is substantially the same"* without new authorizing legislation from Congress.[1] The meaning of "substantially the same" has never been tested but could be very far-reaching. Only one CRA resolution has ever been signed into law. That resolution nullified workplace ergonomics standards proposed by the Clinton Administration, and no standards in that area have been proposed since – even though ergonomics-related problems are responsible for one-third of days-away-from-work cases and cost businesses $15 to $20 billion each year, according to the latest BLS and OSHA statistics.[2]

The CRA is a blunt instrument with dangerous repercussions.

The CRA makes it easier for Congress to block public safeguards on behalf of special interests, undoing rules that often reflect years of painstaking, technical work to deal with complex problems while balancing competing interests. CRA procedures can be used only in a limited period after publication of a rule, so before there is significant experience with implementing a rule or testing industry claims about its actual impacts. Industry cost estimates, often extravagant, and claims of detrimental effects are often not borne out once a rule is put into effect.

ENVIRONMENTAL STANDARDS AND RULES AT RISK

Under CRA rules, Congress has 60 days (session days in the Senate; legislative days in the House) to use the expedited CRA process to consider a joint resolution of disapproval. The clock is reset at the beginning of a new Congress, following a 15-session day reset period. According to the Congressional Research Service, rules sent to the Congress on or after June 13, 2016 are expected to be subject to CRA review in the 115th Congress.

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Among the environmental safeguards that could come under CRA attack in 2017 are:

- Bureau of Land Management limits on methane pollution from fracking. Methane leakage and venting exposes the public to harmful pollutants (Volatile Organic Compounds), worsens climate change and wastes natural gas that could be sold and used.
- Environmental Protection Agency standards that reduce carbon pollution by improving the mileage of medium- and heavy-duty trucks.
- Department of Energy standards to improve the efficiency of at least three appliances (battery chargers, ceiling fans, and dehumidifiers). The standards would save consumers money, save energy, and cut carbon pollution.
- Interior Department standards to provide communities with basic information they desperately need about water pollution caused by nearby coal mining operations, including important protections for clean water and the health of communities impacted by coal mining. These standards will protect the health of Appalachian communities and protect or restore approximately 6,000 miles of streams and 52,000 acres of forest over two decades.

Cancelling these rules would undermine public health and environmental protections.

FREQUENTLY ASKED QUESTIONS ABOUT THE CRA

What counts as a 'rule' under the CRA?

"Rule" is defined broadly under the CRA. The CRA does not apply solely to "major" rules.

However, several categories of rules are exempt from the CRA, including rules of "particular applicability," "Rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee," and "Any rule related to agency management or personnel... [or]...any rule...that does not substantially affect the rights or obligations of non-agency parties."

Can the CRA be used to cancel multiple rules at once?

No. Each CRA joint resolution of disapproval can apply only to a single rule. However, the House passed a bill in 2017 (H.R. 21, the "Midnight Rules Relief Act") to allow bundling of numerous CRAs into one resolution. It enables Congressional leadership to combine many unrelated efforts to roll back rules into a single omnibus package.

Note that the name "midnight rules" is misleading. This implies that these rules were last-minute efforts when they are the culmination of rulemaking work that has been going on for years.

Is there judicial review of the CRA?

The CRA explicitly limits judicial review of its provisions. It states, "No determination, finding, action, or omission under this chapter shall be subject to judicial review." The full extent to which this language precludes courts from reviewing the impact of a joint resolution of disapproval is unclear.

ENDNOTES

1 If a rule has a judicial or statutory deadline requirement, the deadline will be adjusted to one year from passage of the disapproval resolution. The agency still faces a restriction on this new rule being "substantially the same," however.

2 https://www.osha.gov/Publications/osha3125.pdf; https://www.bls.gov/news.release/osh2.nr0.htm.