

More Historic “Firsts” for Regulatory Disapprovals under the Congressional Review Act

By: Daniel Pérez | April 4, 2017

The 115th Congress continues to make history by exercising its powers under the Congressional Review Act ([CRA](#)) to eliminate rules issued at the end of the Obama administration. To date, 13 resolutions of disapproval have passed both chambers of Congress; two additional bills have passed the House. President Trump has signed eight of these into law with three additional resolutions currently awaiting his signature. The Senate passed two more resolutions on March 30th which should be sent to the president soon. Prior to 2017, Congress had only successfully struck down a single [rule](#) using the CRA.

As we’ve previously [discussed](#), the CRA includes procedures that allow Congress to nullify a regulation with only a simple majority in both houses of Congress and with “fast track” provisions that prevent resolutions from being filibustered in the Senate. Disapproval under the CRA also prohibits agencies from issuing future rules that are “substantially the same” as the disapproved rule unless specifically authorized to do so by Congress in the future. The George Washington University Regulatory Studies Center tracks the status of Congressional disapprovals under the CRA [here](#).

First Tie-Breaking Vote on a Resolution of Disapproval by a Vice President

On March 30, 2017, the Senate voted on a motion to proceed with House Joint Resolution 43 ([H.J.Res. 43](#))—a resolution to disapprove a [rule](#) by the Department of Health and Human Services related to sub-recipients of family planning grants. Vice President Mike Pence ended up casting votes that broke a 50-50 tie on both the motion to proceed and the vote on the bill. The Senate vote on this resolution was similar to other disapprovals under this Congress in that they are, 1) generally [close](#) votes that, 2) largely [break](#) along party lines.

Bills Awaiting the President’s Signature

Among the five bills headed to the president, three of them are currently “on his desk,” awaiting his signature. The first bill ([H.J. Res. 69](#)) would nullify a [rule](#) issued by the Fish and Wildlife Service (FWS) “related to non-subsistence takings of wildlife” on National Wildlife Refuges in Alaska. The

In brief...

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second bill ([H.J. Res. 83](#)) would nullify a [rule](#) issued by the Occupational Safety and Health Administration (OSHA) that requires employers to maintain certain records of work-related injuries and illnesses. The final bill ([S.J. Res. 34](#)) would nullify a [rule](#) issued by the Federal Communications Commission (FCC) related to internet providers and other companies offering telecommunications services with respect to customer privacy issues. The GW Regulatory Studies Center previously filed a public [comment](#) on the FCC’s rule during its notice and comment period.

Additional Disapprovals on the Horizon

Depending on changes in the legislative schedule, the [deadline](#) for Congress to use the CRA to nullify regulations issued during the last 60 legislative days of the Obama administration falls sometime in May. Reports [indicate](#) that the president plans to sign any disapproval that lands on his desk. This means that the president still has time to take advantage of the CRA to make progress toward his stated goal of cutting regulations.

Bill	Title	Issuing Agency	Rule	Passed House	Passed Senate	Sent to President	President's Signature
S.J. Res. 34	Protecting the Privacy of Customers of Broadband and Other Telecommunications Services	FCC	81 FR 87274	3/28	3/23	3/30	
H.J. Res. 36	Waste Prevention, Production Subject to Royalties, and Resource Conservation	BLM	1004-AE14	2/3			
H.J. Res. 37	Federal Acquisition Regulation; Fair Pay and Safe Workplaces	DOD/GSA	9000-AM81	2/2	3/6	3/16	3/27
H.J. Res. 38	Stream Protection Rule	DOI	1029-AC63	2/1	2/2	2/6	2/16
H.J. Res. 40	Implementation of the NICS Improvement Amendments Act of 2007	SSA	0960-AH95	2/2	2/15	2/16	2/28
H.J. Res. 41	Disclosure of Payments by Resource Extraction Issuers	SEC	3235-AL53	2/1	2/3	2/6	2/14
H.J. Res. 42	Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants	ETA	1205-AB63	2/15	3/14	3/21	3/31
H.J. Res. 43	Compliance With Title X Requirements by Project Recipients in Selecting Subrecipients	HHS	81 FR 91852	2/16	3/30		
H.J. Res. 44	Resource Management Planning	BLM	1004-AE39	2/7	3/7	3/16	3/27
H.J. Res. 57	Elementary and Secondary Education Act of 1965, as Amended by the Every Student Succeeds Act-Accountability and State Plans	ED	1810-AB27	2/7	3/9	3/16	3/27
H.J. Res. 58	Teacher Preparation Issues	ED	1840-AD07	2/7	3/8	3/16	3/27
H.J. Res. 66	Savings Arrangements Established by States for Non-Governmental Employees	DOL	1210-AB71	2/15			
H.J. Res. 67	Savings Arrangements Established by Qualified State Political Subdivisions for Non-Governmental Employees	DOL	1210-AB76	2/15	3/30		
H.J. Res. 69	Non-Subsistence Take of Wildlife, and Public Participation and Closure Procedures, on National Wildlife Refuges in Alaska	FWS	1018-BA31	2/16	3/21	3/27	
H.J. Res. 83	Clarification of Employer's Continuing Obligation To Make and Maintain an Accurate Record of Each Recordable Injury and Illness	DOL	1218-AC84	3/1	3/22	3/27	