

Congressional Review Act Fact Sheet

Background

Congress enacted the Congressional Review Act (CRA) on March 29, 1996 as part of the Small Business Regulatory Enforcement Fairness Act (SBREFA) in an effort to increase its oversight of federal agency rulemaking. The CRA includes several parliamentary mechanisms, explained below, that enable Congress to disapprove a final rule issued by a federal agency.

Congressional Disapproval via Congressional Review Act

Mechanisms for Disapproval of Rules

- Any member of the House or Senate can introduce a joint resolution disapproving a final agency rule.
- Once introduced, resolutions of disapproval are referred to the committees of jurisdiction in each house of Congress.
- A simple majority in both houses of Congress is required for the measure to pass and be sent to the President.
- If the President vetoes the resolution, a 2/3 majority in both houses would be required to override it.
- The language of the disapproval procedure, further detailed below, ingrains in it “fast track” provisions that will prevent the resolution from being filibustered in the Senate.
- In general, the window of time for using the disapproval procedure is 60 legislative or session days¹ from the time a rule is submitted to Congress and published in the Federal Register.
- **Reset Provision.** If a rule is submitted to Congress fewer than 60 legislative days before it adjourns its final session (adjourns “*sine die*”) a new period for congressional review becomes available to the incoming session of Congress; for purposes of calculating the timeframe for Congressional review, all

¹ A day is counted within the CRA using either legislative days (House of Representatives) or session days (Senate), and it often excludes counting days where either the House or the Senate is adjourned for more than consecutive calendar days. As a general rule of thumb, if there are different time periods calculated as a result of differences between legislative days and session days, the CRA prescribes using the time period that gives Congress more time to consider action regarding a rule. E.g., if 60 session days backwards yields a date in June while 60 legislative days yields a date in May, the CRA prescribes using the May (greater scope for reviewing rules submitted). Finally, the countdown on the 60 day time period only begins on the date that the rule is submitted to Congress; this is the later date of either: its referral to a Senate committee or its receipt by the Office of the Speaker of the House.

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rules are treated as if they had been submitted to Congress and published in the *Federal Register* on the 15th working day of the incoming Congress.² At this point, a new 60 day window for review is available.

- This reset provision creates a condition immediately following a presidential election where an incoming Congress could exercise the disapproval procedure without the threat of a presidential veto.
- **Language specific to the Senate procedures all but guarantee a final vote on the resolution:**
 - Resolutions of disapproval are referred to the committees of jurisdiction in each house of Congress. However, 20 calendar days after the start of a 60 day window for considering a rule, 30 senators can sign and file a petition that discharges the committees of their roles and:
 - Allows any Senator to make a non-debatable motion to proceed to consider disapproval;
 - Disallows amendments;
 - Limits floor debate to 10 hours;
 - Prevents any other dilatory actions.
- The CRA is not subject to judicial review: “no determination, finding, action, or omission under this chapter shall be subject to judicial review.”
- The CRA does not provide the House with “fast track” procedures for considering resolutions of disapproval.

Consequences for Rules Disapproved by Congress

- Once a president signs a resolution of disapproval, the rule is nullified: it either does not take effect or its effect is discontinued (for rules already in effect).
- Additionally, such a rule “may not be reissued in substantially the same form.” Essentially, once a joint resolution of disapproval takes effect, an agency would require Congress to specifically authorize it by law to issue a new rule that is “substantially the same” as the previously disapproved rule.
- **There is one important caveat.** If a statute or court establishes a deadline for promulgating a rule, the CRA joint resolution of disapproval does not prohibit an agency from issuing future rules as required by the deadline. Instead, the deadline to do so is extended by one year from the date of the joint resolution of disapproval. E.g., the Energy Independence and Security Act of 2007 (EISA) requires the Environmental Protection Agency (EPA) to issue annual mandates that increase the required volume of renewable fuels used in the U.S.; if Congress used the CRA to disapprove of an EPA rule setting new targets for renewable fuels, EPA would still be required by statute to issue additional rules related to the Renewable Fuel Standards (RFS) program, however, the new deadline would be one year after the date of the disapproval.
- If either house of Congress rejects a resolution of disapproval for a major rule, it could effectively cause the regulation to take effect sooner than it would have otherwise.

² If legislative days in the House and session days in the Senate do not yield the same date, the CRA prescribes using the latter of the two dates.

Actions Subject to CRA Disapproval

- The definition of what is considered a “rule” is the broadest definition contained within the [Administrative Procedure Act](#) and extends beyond rules that are subject to the notice and comment rulemaking process. E.g., this includes: interim final and direct final rules, amendments to previously issued rules, general statements of agency policy, agency guidance, interpretative rules, etc.
- Proposed rules cannot be disapproved.
- Only agency actions submitted to Congress under the CRA are subject to disapproval. However, a Member of Congress can ask the U.S. General Accountability Office (GAO) to produce a formal opinion regarding whether the agency action that was previously not submitted qualifies under the CRA’s definition of a “rule.”
- A resolution of disapproval can only nullify an agency’s rule in its entirety.
- Multiple rules cannot be “bundled” under a single resolution of disapproval.
- Several categories of rules are exempt from CRA disapproval including:
 - “Rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.”
 - “Any rule related to agency management or personnel... [or]...any rule...that does not substantially affect the rights or obligations of non-agency parties.”

References and Further Reading

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