



THE CONGRESSIONAL REVIEW ACT:

What to Know Before the New Congress Begins



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By Jason Pye

"If you put out a reg, it matters. I think that's really where the thrill comes from. And it is a thrill; it's a high...I love it; I absolutely love it. I was born to regulate. I don't know why, but that's very true. So as long as I'm regulating, I'm happy."

- Martha Kent, Occupational Safety and Health Administration (OSHA)¹

Introduction

The Constitution's Legislative Vesting Clause stipulates, "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."² Yet Democratic and Republican presidents routinely appropriate Congress's legislative powers by acting through administrative agencies to promulgate regulations that have the force of law via the administrative rule making process. Congressional deference to the executive branch in this process empowers bureaucrats in federal agencies to issue regulations that impact every area of public policy.³

Sadly, both parties have been responsible for this erosion of the separation of powers through Congress' improper delegation of policy-making power to the Executive Branch. The administrative state, or, as some prefer to call it, the "regulatory state," has essentially become a fourth branch of government. This is a faceless, unaccountable bureaucracy; what Hannah Arendt called the "rule by Nobody":

"The greater the bureaucratization of public life, the greater will be the attraction of violence. In a fully developed bureaucracy there is nobody left with whom one could argue, to whom one could present grievances, on whom the pressures of power could be exerted. Bureaucracy is the form of government in which everybody is deprived of political freedom, of the power to act; for the rule by Nobody is not no-rule, and where all are equally powerless we have a tyranny without a tyrant."⁴

¹ Overlawyered, "Archive -- June 2000 (III)," Accessed on August 10, 2020 <https://www.overlawyered.com/archives/00june3.html>

² Article I, Section 1 of the Constitution of the United States of America

³ Jason Pye and Josh Withrow, "Restoring the Balance of Powers," FreedomWorks, January 28, 2020 http://fw-d7-freedomworks-org.s3.amazonaws.com/IB_1_2020_Restoring_the_Balance_of_Powers.pdf

⁴ Hannah Arendt, "On Violence," Harcourt Brace Javanovich, March 11, 1970

The lack of accountability has led to an administrative state that has a major impact on Americans. The estimated cost of regulations annually in terms of compliance and implementation is \$1.9 trillion.⁵ If the cost of regulations were its own economy, it would be the eighth-largest economy in the world. The cost of these regulations is passed on to businesses and consumers.

The Trump administration has put an emphasis on deregulation, particularly in the policy areas of healthcare and telecommunications. The administration has also rolled back excesses of the Obama administration’s radical environmental agenda. FreedomWorks Foundation’s Regulatory Action Center (RAC) has helped mobilize grassroots activists across the nation to support this deregulatory agenda. Since the beginning of the Trump administration, the RAC has driven over 120,000 comments from activists urging the removal of existing regulation and opposing new ones.

Such an emphasis on deregulation has led to approximately eight regulations being cut for every new one implemented throughout the duration of the Trump administration. According to estimates from the White House Council of Economic Advisors, these cuts from the administration will increase the real income of Americans by \$53 billion per year over the next decade.⁶

Another avenue for deregulation has been the Congressional Review Act.⁷ Little known or used before the 115th Congress, which began in January 2017, the Congressional Review Act provides a way to target some federal agencies’ rules. The use of the Congressional Review Act by the 115th Congress to cancel regulations published in the final months of the Obama administration saved Americans \$41 billion annually.⁸

While the use of the Congressional Review Act was beneficial in the early days of the Trump administration by a Republican-controlled House and Senate to cancel rules issued within the preceding 60 session days in the Senate and 60 legislative days in the House as provided by the law, it may of course be used by Congress to cancel rules issued by federal agencies under a different set of circumstances, specifically, with a Democratic President and a Democratic-controlled House and Senate. The Congressional Review Act also includes an additional review period at the beginning of a new session of each chamber of Congress for final federal agency actions that are published within 60 session days and 60 legislative days of adjournment.

5 Clyde Wayne Crews, “Ten Thousand Commandments: An Annual Snapshot of the Federal Regulatory State, 2020 Edition,” Competitive Enterprise Institute, May 27, 2020 https://cei.org/sites/default/files/Ten_Thousand_Commandments_2020.pdf
6 Council of Economic Advisors, “President Trump’s Regulatory Relief Helps All Americans,” White House. Accessed on August 11, 2020. <https://www.whitehouse.gov/articles/president-trumps-regulatory-relief-helps-americans/>
7 P.L. 104-121 (110 Stat. 868-874)
8 Council of Economic Advisors, “The Economic Effects of Federal Deregulation since January 2017: An Interim Report,” June 2019 <https://www.whitehouse.gov/wp-content/uploads/2019/06/The-Economic-Effects-of-Federal-Deregulation-Interim-Report.pdf>

With the backdrop of a pandemic and a shifting congressional calendar, it is difficult to determine the exact date when federal agencies’ actions subject to the Congressional Review Act could carry over into the 117th Congress. Technically, the members of the Senate and Senate make the determination of the deadline. In practice, members have deferred to the parliamentarians of each chamber, although the determination of the parliamentarians is not binding.

Some deregulatory actions that could be vulnerable to the Congressional Review Act in the 117th Congress are the Navigable Waters Protection Rule (also known as the Waters of the United States (WOTUS) Rule),⁹ the Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule,¹⁰ and the modernization of regulations under the National Environmental Protection Act (NEPA).¹¹ These three examples, as well as many others not mentioned, were finalized after in April or after, which could be subject to additional review in the 117th Congress.

Of course, a regulation or guidance document issued by a federal agency that slips past the Congressional Review Act deadlines can be rolled back by an administration through the regular rulemaking process. Rolling back a regulation through the rulemaking process can take some time, however, whereas the avenue provided under the Congressional Review Act, if applicable to the regulation, significantly speeds up the process. Additionally, if Congress cancels a regulation through the Congressional Review Act, the federal agency that published the regulation is prohibited from reissuing it in “substantially the same form.”

The Congressional Review Act: What to Know Before the New Congress Begins provides historical background on the Congressional Review Act. We review how the Congressional Review Act works, what congressional actions have occurred under the law, and the existing proposed changes to it.

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The Congressional Review Act

The concept of congressional review of rules and regulations gained momentum in 1995 with the Regulatory Transition Act,¹² introduced by then-Sens. Don Nickles (R-Okla.) and Harry Reid (D-Nevada). The Regulatory Transition Act was the

9 85 FR 22250
10 85 FR 24174
11 85 FR 43304
12 S. 219, 104th Congress (1995)

beginning of the legislative effort to address the growth of federal regulation. The legislation was attached as an amendment to the Comprehensive Regulatory Reform Act¹³ and the Small Business Regulatory Enforcement Fairness Act.¹⁴ None of these three bills ever became law, although each saw movement.

During the March 1996 debate on Nickles-Reid congressional review amendment to the Small Business Regulatory Enforcement Fairness Act, Reid said:

“The U.S. Chamber of Commerce has estimated the cost of complying with regulations is \$510 billion a year, approximately 9 percent of our gross domestic product.”

“The amount of time spent filling out paperwork has also been estimated at about \$7 billion. I think that is too low. I think it is much higher than that. Now, not all regulations are bad. Some regulations are valuable and serve important purposes, but because of the regulatory efforts that we have made, we have made great progress. Our workplaces are generally safer. We have much cleaner water than we used to have, both in our rivers and streams and in our drinking water. Air quality standards are better than they used to be. The problem, though, is that many times we pass laws and then the bureaucrats step in and make very complicated regulations that go beyond the intent of our law, beyond our sound policy.”

“These complex regulations, as I have stated, go way beyond the intent of Congress and fail to recognize the practical implications and impact of these regulations. Under the current regulatory environment, small business owners must hire entire legal departments to comply with these countless regulations. This reality has led Americans to become frustrated and skeptical of Government, and that is not the way it should be. According to polls, more than half the American public believe that regulations affecting businesses do more harm than good. That is certainly too bad.”

“This amendment will allow the Congress to look at these major rules before they go into effect. We are going to pass some more laws, but when the regulations are promulgated, we are going to have the opportunity to look at them. If we do not like these regulations, we can veto them, in effect. That is the way it should be.”

[...]

“Congress is intended to be more than just a roadblock for regulators,

13 S. 343, 104th Congress (1995)
14 S. 942, 104th Congress (1995)

but a voice representing the many segments of society to put democracy back in public policy.”¹⁵

In March 1996, the Republican-controlled Congress passed and President Bill Clinton signed the Contract with America Advancement Act into law.¹⁶ Among its many provisions, the Contract with America Advancement Act increased the statutory debt limit of the United States to \$5.5 trillion, increased the Social Security earnings limit, and contained several regulatory reforms.

Section 8 of the Contract with America Advancement Act set forward the procedures by which Congress can review and disapprove of rules finalized by federal agencies. The Congressional Review Act (CRA) was intended to provide a unique check on regulatory power of the Executive Branch. The CRA provides a fast-track process in the Senate to consider joint resolutions to nullify or otherwise cancel rules and regulations issued by federal agencies.

The CRA requires federal agencies to submit rules to committees of jurisdiction in both chambers of Congress and to the Comptroller General of the United States, who runs the Government Accountability Office (GAO), for review.¹⁷ In turn, the GAO tracks federal rules in a publicly accessible database.¹⁸

The Administrative Procedures Act (APA) defines a rule as “*the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency and includes the approval or prescription for the future of rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services or allowances therefor or of valuations, costs, or accounting, or practices bearing on any of the foregoing.*”¹⁹ (Emphasis added.)

The Congressional Review Act narrows the scope of what is considered a rule to only “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.”²⁰ This would include rules promulgated as required or interpreted by law, as well as some guidance documents issued by federal agencies. Ultimately, whether a guidance document is subject to the CRA or not may be determined by whether it carries the “force of law.”²¹ A rule as defined by the APA does not include executive orders issued by the president.²² The CRA excludes monetary policy decisions made

15 142 Cong. Rec. S2162
16 Public Law 104-121
17 5 U.S.C. 801-808
18 Government Accountability Office, “Congressional Review Act, Accessed August 10, 2020 <https://www.gao.gov/legal/other-legal-work/congressional-review-act>
19 5 U.S.C. 551(4)
20 5 U.S.C. 804(3)
21 290 F.3d 377 (2002)
22 505 U.S. 788 (1992)

by the Federal Reserve and the Federal Open Market Committee from congressional review.²³

Every federal agency promulgating a rule is required to send several items with its report and a copy of the rule to each chamber of Congress and the GAO. These items include a cost-benefit analysis, a regulatory flexibility analysis, and the procedure for gathering comments.²⁴ The promulgating federal agency must also show compliance with certain sections of the Unfunded Mandates Reform Act of 1995.

The chairman and ranking member in each chamber of the committee(s) of jurisdiction receive copies of the report from the federal agency. The comptroller general is required to send a report on each major rule to each committee of jurisdiction within 15 days of the submission of the major rule to Congress or publication date of the major rule in the *Federal Register*. For the purposes of the CRA, a major rule is defined as a rule that has an annual economic impact of \$100 million or more, would result in a “major increase” in costs or prices, and have “significant adverse effects” on business or employment.²⁵

The Senate has 60 session days and the House has 60 legislative days to disapprove of a given rule through a joint resolution,²⁶ as an H.J.Res. or an S.J.Res. In legislative jargon, such a joint resolution under the Congressional Review Act is called a “CRA.” The clock for the 60 session days in the Senate and 60 legislative days in the House begins running on the later of two days, either the date of the submission of the rule to Congress or its publication in the *Federal Register*.

The CRA includes a provision that allows for an additional review of a federal agency action.²⁷ This happens when a rule is submitted within 60 session days in the Senate and 60 legislative days in the House of annual adjournment, known as *sine die*. The period for congressional review would reset on the 15th session day in the Senate and the 15th legislative day in the House, providing another review period of 60 session days in the Senate and 60 legislative days in the House.

The additional review period is not limited to the adjournment between two sessions of the same Congress. It also applies from one Congress to the next. For example, rules published within 60 session days in the Senate and 60 legislative days in the House before adjournment of the 116th Congress would reset on the 15th session day in the Senate and the 15th legislative day in the House and be subject to an additional 60 session days and 60 legislative days of review.

23 5 U.S.C. 807

24 5 U.S.C. 801(a)

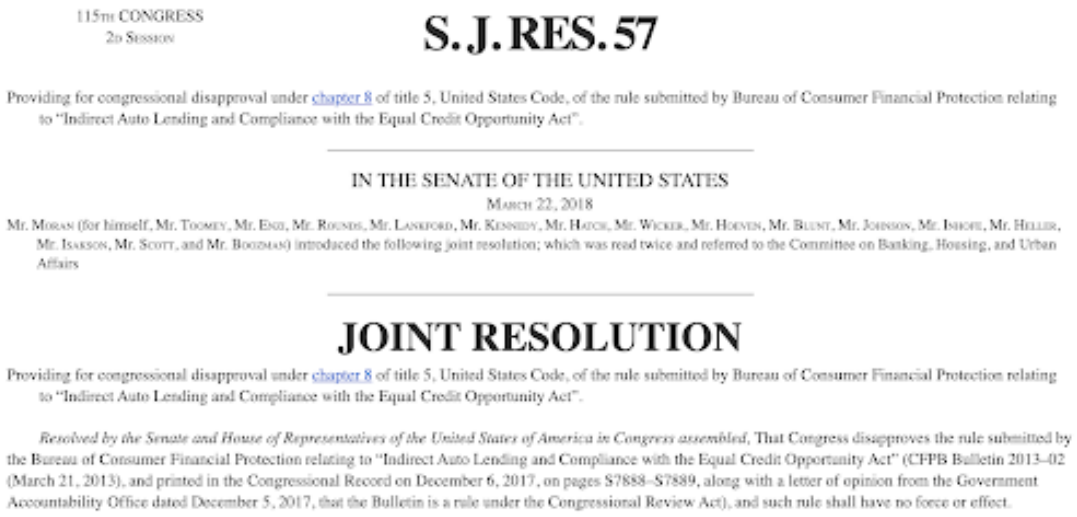
25 5 U.S.C. 804(2)

26 In the Senate, there are legislative days and calendar days. A calendar day ends when the clock strikes midnight. A legislative day ends whenever the Senate adjourns and reconvenes, even if on the same calendar day. One legislative day may encompass multiple calendar days. Of course, a calendar day does not matter if the Senate is not conducting business (i.e., it has either recessed or adjourned to a date certain). A pro forma day does not count as a session or legislative day.

27 5 U.S.C. 801(d)

In practice, federal agencies have not always submitted reports to committees of jurisdiction. In the opening days of the Trump administration, some speculated that Congress could reach back several years to nullify rules and guidance documents that were not submitted to committees of jurisdiction.²⁸ The nascent Trump administration would have had to formally submit reports on rules not previously submitted to Congress for review under CRA. Ultimately, this theory was not tested.

After the resolving clause,²⁹ the text of the CRA is statutorily required to state: “That Congress disapproves the rule submitted by the [rulemaking agency] relating to [topic of the rule and *Federal Register* information], and such rule shall have no force or effect.”³⁰



An example of a joint resolution under the Congressional Review Act from the 115th Congress. This particular CRA was passed and signed into law.

A CRA is considered privileged. After a CRA is discharged from committee and referred to the floor for consideration, it is in order for any senator to make a motion to proceed to consideration of the CRA. Procedural roadblocks that exist in the ordinary legislative process (e.g, points of order, amendments to the motion, or a motion to postpone) are waived. It is out of order for the Senate to reconsider the vote for a motion to proceed if the motion is agreed to or disagreed to. Debate on the CRA is limited to ten hours, divided equally between the two sides. Debatable motions are also limited to ten hours of debate.

Although most legislation that is considered by the Senate is subject to a 60-vote threshold for cloture motions to limit debate, “fast track” procedures eliminate this requirement because the CRA already limits debate. Essentially, this means that no

28 Kimberley A. Strassel, “A GOP Regulatory Game Changer,” Wall Street Journal, January 26, 2017 <https://www.wsj.com/articles/a-gop-regulatory-game-changer-1485478085>

29 The resolving clause is the lead to the statutorily required text. It reads, “Resolved by the Senate and House of Representatives of the United States of America in Congress assembled...”

30 5 U.S.C. 802(a)

senator may filibuster consideration of a CRA, either through a “talking filibuster,” in which a senator holds the floor for as long as he or she wishes, or a “technical filibuster,” in which cloture on the motion to proceed or cloture to limit debate fails to get the required 60 votes.

Although a committee of jurisdiction can refer a CRA to the floor for consideration in the Senate, there is another process through which it may be brought up. If a committee of jurisdiction has not reported a CRA out for consideration on the floor after 20 calendar days, it may be discharged from the committee and placed on the floor through a petition with the signatures of 30 senators.³¹

If a rule is canceled through a CRA, the promulgating federal agency is prohibited from promulgating a rule “in substantially the same form” unless it is specifically required by law. The CRA does not define this phrase. Federal courts are prohibited from judicial review of the CRA,³² which has been taken include congressional and agency actions, including noncompliance. In 2009, then-Judge Brett Kavanaugh of the U.S. Court of Appeals for the D.C. Circuit wrote that the CRA “denies courts the power to void rules on the basis of agency noncompliance with the Act.”³³ Essentially, if there is ever a dispute between Congress and a federal agency over whether a rule is “substantially the same,” federal courts may not resolve it.

One of the concerns expressed about the CRA is that it only cancels a regulation but requires that the underlying issue be solved through the traditional legislative process. This is a feature of the CRA, not a bug. The CRA was not designed to address these underlying issues. Adding additional legislative text to address an underlying issue that the regulation provided would violate privilege in the Senate, subjecting it to the ordinary legislative process, such as requiring 60 votes for procedural motions. Nothing would prohibit a representative or senator from introducing standalone legislation to address that underlying issue. In fact, this is how such a process should be carried out under regular order of functional legislating.

Legislative Action on CRAs

At the time of its passage, lawmakers hailed the Congressional Review Act as a substantive means to target major rules and restore congressional power. Then-House Judiciary Committee Chairman Henry Hyde (R-Ill.) declared, “[I]t is important to emphasize that this approach means that Congress must be prepared to take on greater responsibility in the rulemaking process. If during the review period, Congress identifies problems in a proposed major rule prior to its promulgation, we must be prepared to take action. Each standing committee will have to carefully

31 5 U.S.C. 802(c)
32 5 U.S.C. 805
33 568 F.3d 225 (2009)

monitor the regulatory activities of those agencies falling within their jurisdiction.”³⁴

The intent of Congress may have been to provide more oversight on departments and agencies with rulemaking authority, but there was a time when lawmakers rarely exercised that authority. Prior to the 115th Congress, which began in January 2017, the CRA saw limited use.

Between March 1996, when the CRA became law, and the end of 2016, 110 CRAs were introduced.³⁵ Only one became law during that time period. In March 2001, President George W. Bush signed a CRA that struck down the Department of Labor’s ergonomics rule,³⁶ which would have cost employers \$4.5 billion annually,³⁷ although the cost was disputed by many in Congress. During the debate on the CRA, Sen. Kit Bond (R-Mo.) noted, “The Small Business Administration Advocacy Council of the Clinton administration found the earliest draft was underestimated by a factor of up to 15 times, even before [the Occupational Safety and Health Administration (OSHA)] added more requirements.”³⁸

There were other attempts to use the CRA to eliminate regulations during President Barack Obama’s administration. Prior to 2010, only six CRAs received votes or were attempted to be passed by unanimous consent in either chamber. During the Obama administration, however, the CRA was a tool that began to see increased use as Republicans began targeting notable regulatory excesses, particularly after Republicans regained control of the Senate in January 2015.

Ultimately, the CRA saw more successful uses under a certain set of circumstances: a Republican-controlled Congress and a Republican president immediately following a Democratic president who had a proclivity for over-regulation. Under these circumstances, the CRA grew from an arcane legislative tool to frequently used legislative tool to combat regulatory overreach.

34 142 Cong. Rec. H2999 (1996)
35 The Congressional Research Service (CRS) gives a higher number, but this issue briefs limits the count to only joint resolutions introduced in the House and Senate, which is the type of legislation required under the CRA. The language required in CRA has been introduced in standard legislation that is not given privilege in the Senate. Including standard legislation, the language of the CRA appeared in 110 joint resolutions and 13 normal bills (H.R. ____ or S. ____).
36 Ben Liberman, “Clinton’s Last-Minute Environmental Regs: More Targets for the Congressional Review Act,” Competitive Enterprise Institute, March 26, 2001 <https://cei.org/studies-point/clinton%E2%80%99s-last-minute-environmental-regs-more-targets-congressional-review-act>
37 Government Accountability Office, “Department of Labor, Occupational Safety and Health Administration: Ergonomics Program, GAO-01-200R, November 29, 2000,” Accessed August 10, 2020 <https://www.gao.gov/decisions/majrule/d01200r.htm>
38 147 Cong. Rec. S1854 (2001)

ACTION ON CRAS IN CONGRESS BETWEEN 1996 AND 2018						
CONGRESS	BILL	SPONSOR	AGENCY	HOUSE	SEN	PRES
104th	S.J.Res. 60	Sen. Trent Lott (R-Miss.)	HCFA	N/A	Fail	N/A
107th	S.J.Res. 6	Sen.Don Nickles (R-Okla.)	OSHA/Labor	Passed	Pass	Sign
108th	S.J.Res. 6	Sen. Byron Dorgan (D-N.D.)	FCC	N/A	Pass	N/A
108th	S.J.Res. 4	Sen. Kent Conrad (D-N.D.)	USDA	N/A	Pass	N/A
109th	S.J.Res. 20	Sen. Patrick Leahy (D-Vt.)	EPA	N/A	Fail	N/A
110th	S.J.Res. 28	Sen. Byron Dorgan (D-N.D.)	FCC	N/A	Pass	N/A
111th	S.J.Res. 26	Sen. Lisa Murkowski (R-Alaska)	EPA	N/A	Fail	N/A
111th	S.J.Res. 30	Sen. Johnny Isakson (R-Ga.)	NMB	N/A	Fail	N/A
111th	S.J.Res. 39	Sen. Mike Enzi (R-Wyo.)	CMS/HHS	N/A	Fail	N/A
112th	H.J.Res. 37	Rep. Greg Walden (R-Ore.)	FCC	Pass	N/A	N/A
112th	S.J.Res. 27	Sen. Rand Paul (R-Ky.)	EPA	N/A	Fail	N/A
112th	S.J.Res. 6	Sen. Kay Bailey Hutchison (R-Texas)	FCC	N/A	Fail	N/A
112th	S.J.Res. 36	Sen. Mike Enzi (R-Wyo.)	NLRB	N/A	Fail	N/A
112th	S.J.Res. 37	Sen. Jim Inhofe (R-Okla)	RPA	N/A	Fail	N/A
112th	H.J.Res. 118	Rep. Dave Camp (R-Mich.)	OFAACF/HHS	Pass	N/A	N/A
114th	S.J.Res. 8	Sen. Lamar Alexander (R-Tenn.)	NLRB	Pass	Pass	Veto
114th	S.J.Res. 24	Sen. Shelley Moore Capito (R-W.V.)	EPA	Pass	Pass	Veto
114th	S.J.Res. 23	Sen. Mitch McConnell (R-Ky.)	EPA	Pass	Pass	Veto
114th	S.J.Res. 22	Sen. Joni Ernst (R-Iowa)	EPA	Pass	Pass	Veto
114th	S.J.Res. 28	Sen. John McCain (R-Ariz.)	USDA	N/A	Pass	N/A
114th	H.J.Res. 88	Rep. Phil Roe (R-Tenn.)	Labor	Pass	Pass	Veto
115th	H.J.Res. 41	Rep. Bill Huizenga (R-Mich.)	SEC	Pass	Pass	Sign
115th	H.J.Res. 38	Rep. Bill Johnson (R-Ohio)	Interior	Pass	Pass	Sign
115th	H.J.Res. 40	Rep. Sam Johnson (R-Texas)	SSA	Pass	Pass	Sign
115th	H.J.Res. 44	Rep. Liz Cheney (R-Wyo.)	Interior/BLM	Pass	Pass	Sign
115th	H.J.Res. 37	Rep. Virginia Foxx (R-N.C.)	DOD/GSA/ NASA	Pass	Pass	Sign
115th	H.J.Res. 58	Rep. Brett Guthrie (R-Ky.)	Education	Pass	Pass	Sign
115th	H.J.Res. 57	Rep. Todd Rokita (R-Ind.)	Education	Pass	Pass	Sign
115th	H.J.Res. 42	Rep. Kevin Brady (R-Texas)	Labor	Pass	Pass	Sign
115th	H.J.Res. 83	Rep. Bradley Byrne (R-Ala.)	Labor	Pass	Pass	Sign
115th	H.J.Res. 69	Rep. Don Young (R-Texas)	Interior	Pass	Pass	Sign
115th	S.J.Res. 34	Sen. Jeff Flake (R-Ariz.)	FCC	Pass	Pass	Sign
115th	H.J.Res. 43	Rep. Diane Black (R-Tenn.)	HHS	Pass	Pass	Sign
115th	H.J.Res. 67	Rep. Francis Rooney (R-Fla.)	Labor	Pass	Pass	Sign
115th	H.J.Res. 66	Rep. Tim Walberg (R-Mich.)	Labor	Pass	Pass	Sign

CONGRESS	BILL	SPONSOR	AGENCY	HOUSE	SEN	PRES
115th	H.J.Res. 36	Rep. Rob Bishop (R-Utah)	BLM	Pass	N/A	N/A
115th	H.J.Res. 111	Rep. Keith Rothfus (R-Pa.)	CFPB	Pass	Pass	Sign
115th	S.J.Res. 52	Sen. Edward Markey (D-Mass.)	FCC	N/A	Pass	N/A
115th	S.J.Res. 57	Sen. Jerry Moran (R-Kan.)	CFPB	Pass	Pass	Sign
115th	S.J.Res. 63	Sen. Tammy Baldwin (D-Wis.)	Treasury/Labor/ HHS	N/A	Fail	N/A
115th	S.J.Res. 64	Sen. Jon Tester (D-Mont.)	Treasury	N/A	Pass	N/A

Source: Congress.gov

In the 116th Congress, which began in January 2019, there have been 11 CRAs introduced. Four of those CRAs have already seen legislative action. One CRA passed both chambers of Congress³⁹ but was vetoed by President Trump.⁴⁰ (This issue brief does not include these CRAs in the above table or subsequent tables because the 116th Congress has not yet ended.)

In recent years, CRAs typically have been targeted at controversial rules. One example of this was the CRA to block the Environmental Protection Agency’s (EPA) Clean Power Plan Rule.⁴¹ The Clean Power Plan was designed to reduce carbon emissions emissions by requiring states to limit emissions from fossil fuel-powered plants, such as coal plants. Although the claim was that the Clean Power Plan would have significant public health benefits and a minimum impact on the economy,⁴² the rule would have actually had a substantial negative economic impact through a reduction in economic output, a loss of jobs, and electricity price increases, along with an only minimal positive impact environmentally.⁴³ This particular CRA was, unfortunately, vetoed by President Obama,⁴⁴ although the Clean Power Plan has now been rolled back under President Donald Trump’s EPA.⁴⁵

The Environmental Protection Agency has been the federal agency most frequently targeted by CRAs, followed by the Department of Labor. Rules published by several other departments and federal agencies have been subject to CRAs.

39 H.J.Res. 76, 116th Congress (2019)
40 166 Cong. Rec. H2361-H2362 (2020)
41 S.J.Res. 24, 114th Congress (2015)
42 Marlo Lewis, “Repealing the Clean Power Plan will benefit all Americans,” Washington Examiner, October 17, 2017 https://www.washingtonexaminer.com/repealing-the-clean-power-plan-will-benefit-all-americans
43 Kevin Dayaratna, “The Economic Impact of the Clean Power Plan,” The Heritage Foundation, June 24, 2015 https://www.heritage.org/testimony/the-economic-impact-the-clean-power-plan
44 162 Cong. Rec. S28 (2016)
45 84 FR 32520

WHICH FEDERAL AGENCIES’ ACTIONS HAVE BEEN TARGETED BY CRAS?

DEPARTMENT/AGENCY	CRAS	DEPARTMENT/AGENCY	CRAS
Environmental Protection Agency	41	Office of Natural Resources Revenue	3
Department of Labor	21	Health Care Financing Administration	3
Federal Communications Commission	14	Office of Family Assistance of the Administration for Children and Families	3
Department of the Interior	12	National Mediation Board	2
Department of Health and Human Services	11	Securities and Exchange Commission	2
Department of the Treasury	10	General Services Administration	2
Internal Revenue Service	7	Social Security Administration	2
Bureau of Consumer Financial Protection	9	National Aeronautics and Space Administration	2
Centers for Medicare and Medicaid Services	8	Comptroller of the Currency	2
Department of Agriculture	7	Equal Employment Opportunity Commission	2
Bureau of Land Management	6	National Park Service	1
Department of Education	4	United States Postal Service	1
Federal Election Commission	4	Federal Energy Regulatory Commission	1
Department of Energy	4	President	1
National Labor Relations Board	4	Department of Commerce	1
U.S. Fish and Wildlife Service	4	U.S. Citizenship and Immigration Services	1
Internal Revenue Service	4	Department of Transportation	1
Army Corps of Engineers	3	U.S. Agency for International Development	1

Source: Congress.gov
(Note: Some CRAs included multiple agencies.)

The 115th Congress saw 73 CRAs introduced, as well as a flurry of legislative activity on CRAs. As noted, prior to the beginning of the 115th Congress, only one CRA passed both the House and Senate and was signed into law. However, between February 2017 and March 2018, 16 CRAs were passed by both chambers of Congress and signed into law. There were other CRAs that received legislative action but were rejected either in the chamber of origination or in the other chamber.

JOINT RESOLUTIONS UNDER THE CONGRESSIONAL REVIEW ACT INTRODUCED BY CONGRESS

CONGRESS	CRAS	CONGRESS	CRAS	CONGRESS	CRAS	CONGRESS	CRAS
104th	2	107th	12	110th	9	113th	7
105th	4	108th	7	111th	13	114th	27
106th	5	109th	4	112th	20	115th	73

Source: Congress.gov

The limited use of the CRA prior to the 115th Congress exposed flaws in the design of the law. Although the CRA was meant to provide a crucial check on the regulatory power of the Executive Branch, the legislative lethargy of Congress and political tribalism that leads to deference to a presidential administration has contributed to a further decline of legislative power.

Near the end of President George W. Bush’s second term in January 2009, economist Veronique de Rugy challenged the assertion by then-President-elect Barack Obama that the two-term Republican had “take[n] a hands-off approach to regulation.” De Rugy lamented that the Bush administration, in fact, took a relatively heavy-handed approach to regulation.

“Some people still seem to think Republicans take a hands-off approach to regulation, probably because the party is always quick to criticize the burdens regulations place on businesses,” De Rugy explained. “But Republican rhetoric doesn’t always match Republican policy.”

“In 2007, according to Wayne Crews of the Competitive Enterprise Institute, roughly 50 regulatory agencies issued 3,595 final rules, ranging from boosting fuel economy standards for light trucks to continuing a ban on bringing torch lighters into airplane cabins,” the libertarian economist noted. “Five departments (Commerce, Agriculture, Homeland Security, Treasury, and the Environmental Protection Agency) accounted for 45 percent of the new regulations.”⁴⁶

De Rugy noted that though the number of new rules declined by 15 percent under the Bush administration, the cost of new rules considered “economically significant” or major rules -- those with an annual cost of \$100 million or more -- increased by 70 percent. “Overall, the final outcome of this Republican regulation has been a significant increase in regulatory activity and cost since 2001,” she wrote. “The number of pages added to the *Federal Register*, which lists all new regulations, reached an all-time high of 78,090 in 2007, up from 64,438 in 2001.”

Republicans’ approach to regulation has noticeably changed in recent years, focusing on administrative deregulation, as well as the CRA. Whether this attitude will last in the next Republican administration, considering party congressional leadership’s proclivity for allowing the White House to take the lead on policy matters, obviously remains to be seen. It is entirely possible that the next Republican president will determine this outcome if congressional Republicans continue to defer so much authority to federal agencies. Democrats, on the other hand, have continued to take an aggressive approach to regulation, pushing back on deregulatory efforts and using the CRA to target Trump administration rules.

Considering the laws of the CRA, Congress can take steps to boost its influence

46 Veronique de Rugy, “Bush’s Regulatory Kiss-Off,” Reason, January 2009 <https://reason.com/archives/2008/12/10/bushs-regulatory-kiss-off>

over the agency rulemakings by amending the law and/or making use of the appropriations process (“the power of the purse”) to influence the Executive Branch, including federal agencies.

Proposed Changes to the Congressional Review Act

While the Congressional Review Act is a valuable tool under the right set circumstances, the 1996 law alone is not enough on its own to restore Article I. The Regulations from the Executive in Need of Scrutiny (REINS) Act would, however, give teeth to the Congressional Review Act.

The REINS Act would subject major rules -- those with an annual impact of \$100 million or more -- to congressional approval. Both chambers would have to vote on a proposed rule within 60 legislative days and the president would have to sign it before enforcement can begin.⁴⁷ If a resolution is not passed, the rule cannot take effect. Non-major rules would still be subject to the previous CRA process.

The REINS Act was first introduced in 111th Congress by then-Rep. Geoff Davis (R-Ky.)⁴⁸ and then-Sen. Jim DeMint (R-S.C.).⁴⁹ Because both chambers of Congress were controlled by Democrats, it was never brought up for a vote.

The REINS Act was reintroduced in the 112th Congress by Rep. Davis⁵⁰ and Sen. Rand Paul (R-Ky.).⁵¹ In December 2011, the House, under Republican control, passed the REINS Act by a vote of 241 to 184.⁵² It never received a vote in the Democratic-controlled Senate.

Then-Rep. Todd Young (R-Ind.) sponsored the REINS Act in the 113th Congress.⁵³ Once again, Sen. Paul carried the bill in the Senate.⁵⁴ The bill passed the House, this time by a vote of 232 to 183.⁵⁵ The Senate, still controlled by Democrats, never brought the bill to the floor.

The REINS Act was reintroduced by Rep. Young⁵⁶ and Sen. Paul⁵⁷ in the 114th Congress. The House version passed by a vote of 243 to 165.⁵⁸ Although the chamber was controlled by Republicans during the 114th Congress, the Senate never even so much as attempted a cloture motion on the motion to proceed, the most

basic of procedural votes to begin consideration of legislation, on the REINS Act.

With a Republican now in the White House, the REINS Act was reintroduced in the 115th Congress with a sense of optimism. Rep. Doug Collins (R-Ga.) sponsored the bill in the House,⁵⁹ and it was quickly moved through the lower chamber, passing by a vote of 237 to 187.⁶⁰ Sen. Paul introduced the bill in the Senate.⁶¹ Once again, the REINS Act was not brought up for a vote in the Republican-controlled Senate.

There were two floor amendments included in the version of the REINS Act that passed the House in the 115th Congress. An amendment offered by Rep. Luke Messer (R-Ind.) would have required each federal agency promulgating a new rule to identify and repeal an existing rule or multiple rules to offset the cost of the new rule.⁶² The amendment passed by a vote of 235 to 185.⁶³

Another amendment offered by Rep. Steve King (R-Iowa) would have required Congress to review all federal rules over a ten year period.⁶⁴ Each agency would send a minimum of 10 percent of its rules to Congress for review. Congress could extend the rule or sunset it. The King amendment passed by a vote of 230 to 193.⁶⁵

Sen. Rand Paul (R-Ky.) introduced the REINS Act in the Senate⁶⁶ during the 116th Congress while Rep. Jim Sensenbrenner (R-Wis.) carried it in the House.⁶⁷ Although Democrats have increasingly tried to use the CRA in the 115th Congress and the 116th Congress to cancel rules issued by the Trump administration, Democratic leadership does not view the REINS Act as a path forward. The Senate version of the REINS Act was approved in committee,⁶⁸ but the legislation is not expected to come to the floor for a vote.

The REINS Act is not a panacea. Although the bill would turn the CRA into an affirmative process, federal agencies with regulatory power could find ways around the “major rule” designation. Before the REINS Act was considered by the House in January 2017, Rep. Andy Biggs (R-Ariz.) introduced, but later withdrew, an amendment that would have lowered the monetary designation of a major rule to \$50 million from \$100 million.⁶⁹ Even with an amendment that lowers the threshold for a major rule, federal agencies may still break major rules into smaller rules to simply escape the designation.

47 Previous iterations of the REINS Act required a veto within 70 legislative days. The most recent versions have lowered this to 60 legislative days.
48 H.R. 3765, 111th Congress (2009) <https://www.congress.gov/bill/111th-congress/house-bill/3765/>
49 S. 3826, 111th Congress (2010) <https://www.congress.gov/bill/111th-congress/senate-bill/3826/related-bills>
50 H.R. 10, 112th Congress (2011)
51 S. 299, 112th Congress (2011)
52 H.R. 10, Roll Call 901, December 7, 2011 <http://clerk.house.gov/evs/2011/roll901.xml>
53 H.R. 367, 113th Congress (2013)
54 S. 15, 113th Congress (2013)
55 H.R. 367, Roll Call 445, August 2, 2013 <http://clerk.house.gov/evs/2013/roll445.xml>
56 H.R. 427, 114th Congress (2015)
57 S. 226, 114th Congress (2015)
58 H.R. 427, Roll Call 482, July 28, 2015 <http://clerk.house.gov/evs/2015/roll482.xml>

59 H.R. 26, 115th Congress (2017)
60 H.R. 26, Roll Call 23, January 5, 2017 <http://clerk.house.gov/evs/2017/roll023.xml>
61 S. 21, 115th Congress (2017)
62 H.Amdt.3, 115th Congress (2017)
63 H.Amdt.3, Roll Call 12, January 5, 2017 <http://clerk.house.gov/evs/2017/roll012.xml>
64 H.Amdt.13, 115th Congress (2017)
65 H.Amdt.13, Roll Call 21, January 5, 2017 <http://clerk.house.gov/evs/2017/roll021.xml>
66 S. 92, 116th Congress (2019)
67 H.R. 3972, 116th Congress (2019)
68 Senate Committee on Homeland Security and Governmental Affairs, “Business Meeting on July 22, 2020,” July 22, 2020 <https://www.hsgac.senate.gov/imo/media/doc/Committee%20Record-2020-07-222.pdf>
69 House Committee on Rules, “H.R. 26 - Regulations from the Executive in Need of Scrutiny Act of 2017,” Accessed on August 10, 2020 <https://rules.house.gov/bill/115/hr-26>

This does not mean that the REINS Act is not a direction Congress should take. Rather, Congress must carefully consider that regulators may become creative when promulgating regulations that must be expressly approved by lawmakers and signed into law.

Another criticism of the REINS Act is that it could bog down Congress with legislative action required on joint resolutions to approve major rules. The number of major rules published in a year is a fraction of the total rules published. Between 1997 and 2019, there was an average of 66 major rules per year published in the *Federal Register*.

In 2019, there were 80 major rules published in the *Federal Register*. In recent years, the Senate has spent much of its time processing executive-level appointments, spending less time on legislation. The House has focused on passing “messaging bills”; legislation that appeals to the base of the party in control of the chamber but has little chance of becoming law. For example, the 116th Congress will be the least productive of any Congress in recent memory.

This Congress is on pace to pass fewer than 200 new laws, compared to 329 in the 114th Congress and 443 in the 115th Congress.⁷⁰ This is partly a result of divided government, which, historically, is a good thing. The lack of legislative action is also because of the focus on political messaging and the proclivity of Congress to pass at least some of its legislative authority off to the Executive Branch.

There is also a potential work around if the lack of floor time ever becomes a real problem. In the 115th Congress, the House considered and passed the Midnight Rules Relief Act.⁷¹ This legislation would have amended the CRA to allow Congress to include multiple regulations submitted by federal agencies in a single joint resolution. Because Republicans planned on using the CRA to cancel several regulations published in the final days of the Obama administration, Democrats were not inclined to support the legislation.

As Republicans were heavily utilizing the CRA during the 115th Congress, Sen. Cory Booker (D-N.J.)⁷² and Rep. David Cicilline (D-R.I.)⁷³ introduced legislation to repeal the law. In addition to repealing the CRA, the Sunset the CRA and Restore American Protection (SCRAP) Act would have allowed federal agencies to reinstate rules canceled by the CRA.

Neither version of the SCRAP Act received wide support and Sen. Booker and Rep.

⁷⁰ These figures come from a review of legislation on Congress.gov that “became law.” Although it is true that COVID-19 has cut short the number of session days and legislative days in 2020, the political and policy differences between the Democratic-controlled House and Republican-controlled Senate are so stark that agreement has been difficult to come by. We are not advocating nor complaining about the lack of legislating. We are simply making a point that the claimed lack of floor time to consider joint resolutions to approve regulations under the REINS Act would be a choice.

⁷¹ H.R. 21, 115th Congress (2017)

⁷² S. 1140, 115th Congress (2017)

⁷³ H.R. 2449, 115th Congress (2017)

Cicilline, nor any other senator or representative, have reintroduced the legislation in the 116th Congress. But the legislation was a change in the mindset of Democrats. Prior to President Obama taking office in January 2009, Democrats considered the CRA as a means to undo rules put in place in the final days of the Bush administration.⁷⁴ As noted in this issue brief, Democrats have used the CRA to get votes to cancel federal agencies actions published under the Trump administration.

Shortly before Sen. Booker and Rep. Cicilline introduced the SCRAP Act, Sen. Reid defended the CRA in his farewell address to the Senate:

“I know some of my Democratic colleagues will say: Why did you do that? Here is what I did. I worked with Republican Senator Don Nickles from Oklahoma...Don and I talked about this. We knew the administration would change and it would affect every President, Democratic and Republican. It was called the Congressional Review Act. What that said is the President promulgates a regulation and Congress has a chance to look it over to see if it is too burdensome, too costly, too unfair. And we have done that quite a few times. That was because of Reid and Nickles. That was legislation that I did, and it was great when we had Republican Presidents, not so great when we had Democratic Presidents, but it was fair.”⁷⁵

The CRA process has been fair. It can and should be improved, but it has been fair. Democrats have frequently talked about the separation of powers during the Trump administration. The separation of powers outlined by the Constitution is a universal concept, not limited to divided government.

The CRA provides a means, albeit limited, to give Congress authority over the actions of the Executive Branch. Expanding its reach through a concept like the REINS Act is the step Congress should take, and this is a step that should have bipartisan support. This may mean that some regulations championed by Republican and Democratic administrations do not take effect, but it at least partially restores a basic Article I responsibility to the lawmaking branch of the federal government and moves power away from a faceless administrative state.

These amendments to the CRA are not the only changes related to administrative law that Congress can make. There are many other avenues unrelated to the CRA that can be explored, such as establishing a regulatory budget through the Lessening Regulatory Costs and Establishing a Federal Regulatory Budget Act⁷⁶ and eliminating the *Chevron* deference through the Separation of Powers Restoration Act.⁷⁷

⁷⁴ Charlie Savage, “Democrats Look for Ways to Undo Late Bush Administration Rules,” The New York Times, January 11, 2009 <https://www.nytimes.com/2009/01/12/us/12regulate.html>

⁷⁵ 162 Cong. Rec. S6852 (2016)

⁷⁶ H.R. 575, 116th Congress (2019)

⁷⁷ S. 909, 116th Congress (2019)

Potential Constitutional Hurdles for the CRA and the REINS Act

There is speculation that some unknown entity could challenge the constitutionality of the Congressional Review Act because it is a legislative veto. A legislative veto, the modern concept for which has existed since 1932,⁷⁸ is a mechanism through which one chamber or both chambers of Congress may stop an Executive Branch action.

In 1983, the Supreme Court struck down Section 244(c)(2) of the Immigration and Nationality Act that allowed one chamber of Congress to veto an administrative action.⁷⁹ The Supreme Court, in *Immigration and Naturalization Service v. Chadha*, determined that the legislative veto provision ran afoul of bicameralism and the Presentment Clause of Article I.

Born in British-controlled Kenya to Indian parents, Jagdish Chadha was a stateless individual. He legally immigrated to the United States on a student visa and attended Bowling Green University. In 1972, when Chadha's visa expired, the Immigration and Naturalization Service (INS) ordered that he be deported. Kenya, which won its independence from the United Kingdom in 1963, wouldn't receive him.

After the INS suspended Chadha's deportation, the House disapproved of the action, forcing the INS to resume expulsion proceedings. Chadha's challenge eventually worked its way through federal courts, culminating in the Supreme Court case that bears his name. By striking down the legislative veto in Section 244(c)(2) of the Immigration and Nationality Act, Chadha was spared deportation.

On behalf of the majority, Chief Justice Warren Burger wrote, "The prescription for legislative action in Art. I, § 1 -- requiring all legislative powers to be vested in a Congress consisting of a Senate and a House of Representatives -- and § 7 -- requiring every bill passed by the House and Senate, before becoming law, to be presented to the President, and, if he disapproves, to be repassed by two-thirds of the Senate and House -- represents the Framers' decision that the legislative power of the Federal Government be exercised in accord with a single, finely wrought and exhaustively considered procedure. This procedure is an integral part of the constitutional design for the separation of powers."⁸⁰

Justices Lewis F. Powell, Jr. and William Rehnquist dissented in *Chadha*. After the Supreme Court ruled in his favor, Chadha became an American citizen.⁸¹

While the CRA is different from Section 244(c)(2) of the Immigration and Nationality Act because joint resolutions require approval from both chambers of Congress and

78 Louis Fisher, "The Legislative Veto: Invalidated, It Survives," Law and Contemporary Problems, 1993 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4212&context=lcp>

79 462 US 919 (1983)

80 462 U.S. 919 (1983)

81 Lena Williams, "Faces Behind Famous Cases," The New York Times, June 19, 1985 <http://www.nytimes.com/1985/06/19/garden/faces-behind-famous-cases.html>

presentment to the executive branch, Politico highlighted the outrage of bureaucrats who were disheartened to see their work canceled through the 1996 law.⁸²

Politico published comments from Joe Pizarchik, who ran the Department of the Interior's Office of Office of Surface Mining Reclamation and Enforcement throughout the Obama administration. Pizarchik said, "My biggest disappointment is a majority in Congress ignored the will of the people" as lawmakers canceled the rules. Remember, Members of Congress are elected, and voters have given control of the legislative branch to Republicans. Federal bureaucrats, on the other hand, are not elected."

Still, Pizarchik speculated on a potential legal challenge to CRA, saying, "I believe there's a good chance that, in a legal challenge, that a court will overturn Congress' actions here as an unconstitutional usurpation of the executive branch's powers."

Pizarchik doesn't provide a rationale for such a legal challenge to CRA. The CRA allows Congress to pass a resolution canceling a rule, but it has to be signed into law by a president in order for the rule to be nullified. In this case, the executive branch is involved in the equation. Absent veto-proof majorities in the House and Senate, the presidential veto would preserve a regulation.

If the REINS Act were to become law, its constitutionality may also come into question.

The REINS Act, however, is carefully crafted to avoid the bicameral and Presentment Clause conflicts to which Section 244(c)(2) of the Immigration and Nationality Act succumbed in *Chadha*. A joint resolution under the REINS Act must pass both chambers of Congress and be signed into law by the President to go into effect.

Writing in a constitutional defense of the REINS Act, Jonathan Adler explained:

"As then-Judge Stephen Breyer explained in a 1984 lecture, a congressional authorization requirement could replicate the function of the legislative veto invalidated in *Chadha* without the veto's constitutional infirmity. By observing the formal requirements for legislation in Article I, he explained, congressional oversight of agency activity could be maintained without violating constitutional principles of separation of powers. Harvard Law School's Laurence Tribe likewise concluded at the time that such a requirement would be constitutional, even if he also thought it would be a bad idea."

"In some respects the REINS Act is more limited than Breyer's proposal for congressional resolutions of approval for regulatory measures or

82 Alex Guillen and Marianne Levine, "Swift repeal of Obama rules leaves former staffers steaming," Politico, February 11, 2017 <http://www.politico.com/story/2017/02/congress-rules-purge-trump-234922>

the unicameral legislative vetoes at issue in *Chadha*, further blunting any potential constitutional concerns. In contrast to those procedures, the REINS Act would only require congressional approval for so-called ‘major rules.’ Before *Chadha*, the unicameral legislative veto often operated as a replacement for targeted ‘private bills’ affecting the interests of a few. However, those regulations subject to the REINS Act would, by definition, be those that have broader impacts on large segments of the country, if not the nation as a whole. Only those rules deemed to be ‘economically significant’ are covered, and such rules are a small, but important, portion of federal regulatory activity.”⁸³

Unlike Section 244(c)(2) of the Immigration and Nationality Act, neither CRA or the REINS Act violate the principles of bicameralism or the Presentment Clause. The CRA and the REINS Act are on sound constitutional footing.

83 Jonathan Adler, Placing ‘REINS’ on Regulations: Assessing the Proposed REINS Act, Faculty Publications, 2013 <http://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=1507>

Appendix

TABLE 1: TOTAL NUMBER OF MAJOR RULES PUBLISHED

YEAR	RULES	YEAR	RULES	YEAR	RULES	YEAR	RULES
1976	N/A	1987	N/A	1998	76	2009	84
1977	N/A	1988	N/A	1999	51	2010	100
1978	N/A	1989	N/A	2000	77	2011	80
1979	N/A	1990	N/A	2001	70	2012	68
1980	N/A	1991	N/A	2002	51	2013	81
1981	N/A	1992	N/A	2003	50	2014	82
1982	N/A	1993	N/A	2004	66	2015	77
1983	N/A	1994	N/A	2005	56	2016	119
1984	N/A	1995	N/A	2006	56	2017	49
1985	N/A	1996	N/A	2007	61	2018	55
1986	N/A	1997	61	2008	95	2019	80

Source: Congressional Research Service,⁸⁴ Government Accountability Office
(Note: Major rules are defined as having an annual economic impact of \$100 million or more. The total number of major rules were not kept prior to the passage of the Congressional Review Act of 1996.)

TABLE 2: TOTAL NUMBER OF FINAL RULES PUBLISHED

YEAR	RULES	YEAR	RULES	YEAR	RULES	YEAR	RULES
1976	7,401	1987	4,581	1998	4,899	2009	3,503
1977	7,031	1988	4,697	1999	4,684	2010	3,573
1978	7,001	1989	4,714	2000	4,313	2011	3,807
1979	7,611	1990	4,334	2001	4,132	2012	3,708
1980	7,745	1991	4,416	2002	4,167	2013	3,659
1981	6,481	1992	4,155	2003	4,148	2014	3,554
1982	6,288	1993	4,369	2004	4,101	2015	3,410
1983	6,049	1994	4,876	2005	3,943	2016	3,853
1984	5,154	1995	4,713	2006	3,718	2017	3,281
1985	4,843	1996	4,937	2007	3,595	2018	3,368
1986	4,589	1997	4,584	2008	3,830	2019	2,964

Source: Federal Register⁸⁵

84 Congressional Research Service, “Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register,” September 3, 2019 <https://fas.org/sgp/crs/misc/R43056.pdf>
85 Federal Register, “Federal Register Pages Published, 1936-2015,” Retrieved February 4, 2017 <https://www.federalregister.gov/uploads/2016/05/stats2015Fedreg.pdf>

TABLE 3: PAGES ADDED TO THE *FEDERAL REGISTER*

YEAR	PAGES	YEAR	PAGES	YEAR	PAGES	YEAR	PAGES
1976	50,505	1987	47,033	1998	68,571	2009	68,598
1977	57,787	1988	50,616	1999	71,161	2010	81,405
1978	55,696	1989	50,501	2000	74,258	2011	81,247
1979	71,191	1990	49,795	2001	64,438	2012	78,961
1980	73,258	1991	57,973	2002	75,606	2013	79,311
1981	57,736	1992	57,003	2003	71,269	2014	77,687
1982	53,104	1993	61,166	2004	75,675	2015	80,260
1983	53,018	1994	64,914	2005	73,870	2016	95,894
1984	48,643	1995	62,645	2006	74,937	2017	61,308
1985	50,502	1996	64,591	2007	72,090	2018	67,225
1986	44,812	1997	64,549	2008	79,435	2019	70,938

Source: Federal Register⁸⁶
(Note: Page counts exclude blank and skipped pages.)

86 Federal Register, “Federal Register Pages Published, 1936-2015,” Retrieved February 4, 2017 <https://www.federalregister.gov/uploads/2016/05/stats2015Fedreg.pdf>