



## Insight

# The Congressional Review Act in 2017

**SAM BATKINS | MAY 10, 2017**

In the coming days, the period of expedited review (no filibuster) for the Congressional Review Act (CRA) will expire in the Senate. That will put an end to the most expansive use of the CRA in history, with Congress and President Trump repealing 14 regulations, including three major rules. According to American Action Forum (AAF) research, projected savings from these resolutions will save \$3.7 billion in total regulatory costs (\$1.1 billion annually) and eliminate 4.2 million hours of paperwork. These savings are based on original regulatory impact analyses from federal agencies. Outside estimates of compliance costs for these rules project more than \$36.2 billion in total possible savings.

Below are the 14 regulations repealed in 2017 and compliance and paperwork hours, as estimated by regulators and industry.

<b><u>Regulation</u></b>	<b><u>Agency Cost</u></b>	<b><u>Industry Cost</u></b>	<b><u>Paperwork Hours</u></b>
Resource Extraction Issuers	-\$1.29 billion		-217,408
Stream Buffer Rule	-\$1.2 billion	\$29 billion	-218,457
"Fair Pay and Safe Workplaces"	-\$872 million	\$3.2 billion	-2,171,320
Teacher Preparation Issues	-\$278 million	\$718 million	-732,289
Accountability and State Plans	-\$73 million		-936,451
Resource Management Planning			-1,965
Compliance with Title X Requirements	-\$0.02 million		
NICS Improvement Amendments Act			

Drug Testing of Unemployment Applicants			
Non-subsistence Take of Wildlife			
Accurate Records of Recordable Injuries		\$1.9 billion	
Protecting the Privacy of Consumers			
Saving Arrangements from Subdivisions			
Saving Arrangements from States			
<b><u>Totals</u></b>	<b><u>-\$3.7 billion</u></b>	<b><u>-\$34.8 billion</u></b>	<b><u>-4,277,890 hours</u></b>

These rules, “may not be reissued in substantially the same form,” a phrase with an uncertain meaning currently undefined by the courts. As AAF [has noted](#), whether these rules return depends on the original statutory grant of power and if Congress and the administration want them to return. For instance, during the debate over the “Resource Extraction” measure, both House and Senate Republicans expected the Securities and Exchange Commission to go back, “to the drawing board.” Likewise, there are indications in [the press](#) that the drug testing rule could return and that the Federal Communications Commission’s privacy rules could see a second form. With lawsuits likely over both, we could have an initial answer of “substantially the same form” within the next few years.

As of this writing, the Senate rejected of resolution overturning a [\\$1.8 billion](#) fracking rule and approved the rescission of a [state retirement rule](#). In addition, Congress is taking a more formal approach to repeal of a rule from the Department of Transportation on “[Metropolitan Planning](#).” This non-CRA bill would save another \$86 million, and curiously, it enjoys overwhelming bipartisan support. Both the House and Senate bills are sponsored by Democrats from the Chicago area. The Senate passed the legislation by unanimous consent and the House by a [417 to 3](#) margin.

## Industry v. Agency Estimates

As noted above, there are distinct differences between agency estimates of the cost of rules (\$3.7 billion) and industry figures (\$36.2 billion). This shouldn’t come as a huge shock, but for some regulations, the gap between agency and industry estimates is orders of magnitude.

For instance, the Department of Interior estimates its “Stream Buffer” rule would cost only

\$81 million annually, or \$1.2 billion during the next 20 years. However, one outside estimate notes that the value of coal that would be left unrecovered because of the rule could reach \$29 billion; that's only the direct opportunity cost for the industry because of the regulation.

For the "Fair Pay" measure, the Department of Defense did drastically alter its estimate of the rule from the proposed version to the final form. Initially, projected costs were just [\\$91 million annually](#), with 1.6 million paperwork hours. After a round of public comments, these figures increased to more than \$400 million annually and 2.1 million hours. However, one industry estimate puts the total cost around \$3.2 billion, or 3.6 times the total from the agency.

Finally, the Department of Labor (DOL) neglected to provide any cost estimate for its rule on maintaining a record of injuries. Yet, the National Federation of Independent Businesses (NFIB) [projected](#) more than \$1.9 billion in possible costs. Clearly, the new regulation was not costless. NFIB assumed that a daily reconsideration of injury records might take one minute, the equivalent of 30.3 hours per task annually. The retention of a single injury record could impose a nationwide paperwork burden of 41.3 million hours of paperwork. At \$46.72 per hour, that equals \$1.9 billion in possible costs, compared to no real benefits explicated by DOL.

## Obscure or Secret?

One of the curious aspects of the CRA is the depiction online that the law is somehow, "[obscure](#)," "[secret](#)," or "[stealth](#)." For instance, there were more than 150 media mentions of the CRA as an "obscure" law, and several dozen referring to it as "secret" or "stealth." Sometimes reports combine all three modifiers to describe the law.

For anyone who covered regulation during the Obama Administration, describing the CRA in these pejorative tones is strange. Republicans in Congress frequently passed CRA resolutions attempting to overturn Obama-era regulations. He vetoed [all of them](#). The House and Senate spent weeks debating CRA resolutions and regulatory reform. The only difference now is President Trump is supportive of Republican regulatory modernization efforts and he is signing the legislation.

The CRA is hardly a secret "weapon," any more so than passing a piece of legislation is secret. It is simply a bill that addresses a specific rule. Both chambers of Congress pass the resolution of disapproval and the president signs the law. That the CRA is deregulatory in nature is the reason it receives monikers like stealth and obscure. The law and process itself are fully transparent and Republicans have been employing it [since 2001](#).

## First Pass

Deregulation doesn't take three or four months to complete. It takes three or four years and the fruits of this labor may not be on display immediately. Repeal of three major rules is not going to set economic growth on fire. This is arguably just the first pass for regulatory modernization. However, as the graph below demonstrates, the CRA has made its mark, especially compared to new regulations issued since January 20.



As AAF mentioned [here](#), the CRA could be viewed as step one of the reform efforts. However, the one-in, two-out executive order on regulation should be viewed as far more transformative. Combined with [less regulation](#) overall, and the real cost savings will occur during the next three years.

Consider, the administration and Congress could accomplish major deregulatory acts through reform of Dodd-Frank and the Affordable Care Act. In addition, reform of occupational licensing, an infrastructure permitting bill, and reworking the National Environmental Policy Act ([NEPA](#)) could generate notable economic gains.

These forward-looking legislative vehicles would be paired with an aggressive retrospective review effort to examine past rules. This will be a necessity under the one-in, two-out executive order and must provide significant savings to offset new rules implemented during the Trump Administration. Combining CRA votes, a regulatory budget, and positive

regulatory modernization bills could move the needle on economic growth and concurrently improve the process of issuing new rules.

## **Conclusion**

Congress and the administration have made a lasting impact on regulation so far in 2017. With more than a dozen CRA resolutions, they have removed at least \$3.7 billion in total regulatory costs (\$36.2 billion according to industry figures) and marked the first step in an aggressive effort to reform the administrative state. In addition to the immediate economic impact, the use of the CRA in 2017 might chill agency action on controversial regulations in the future.