

MEMORANDUM

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Subject: “Major” Obama Administration Rules Potentially Eligible to be Overturned under the Congressional Review Act in the 115th Congress

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This memorandum was prepared to enable distribution to more than one congressional office.

This memorandum lists “major” rules issued by federal agencies under the Obama Administration that are potentially subject to consideration under the procedures of the Congressional Review Act (CRA) in the 115th Congress.

Background on the Congressional Review Act

The CRA is a tool that Congress may use to overturn a rule issued by a federal agency, including, in some cases, rules issued in a previous session of Congress and by a previous President.¹ The CRA requires agencies to report on their rulemaking activities to Congress and provides Congress with a special set of procedures under which to consider legislation to overturn those rules. The CRA, which was enacted in 1996, was largely intended to assert control over agency rulemaking by establishing a special set of expedited or “fast track” legislative procedures for this purpose, primarily in the Senate.²

Of the approximately 72,000 final rules that have been submitted to Congress since the legislation was enacted in 1996, the CRA has been used to disapprove one rule: the Occupational Safety and Health Administration’s November 2000 final rule on ergonomics, which was overturned using the CRA in March 2001.³ The primary reason the CRA has overturned one rule in the 20 years since its enactment is that under most circumstances, it is likely that a President would veto such a resolution in order to protect rules developed under his own administration, and it may also be difficult for Congress to muster the two-thirds vote in both houses needed to overturn the veto. However, under a specific set of circumstances—a

¹ For more information about the CRA, see CRS Report R43992, *The Congressional Review Act: Frequently Asked Questions*, by Maeve P. Carey, Alissa M. Dolan, and Christopher M. Davis.

² For a detailed discussion of the CRA’s disapproval procedures, see CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth. For a discussion of the “carryover” procedures, see CRS Report RL34633, *Congressional Review Act: Disapproval of Rules in a Subsequent Session of Congress*, by Curtis W. Copeland and Richard S. Beth.

³ U.S. Department of Labor, Occupational Safety and Health Administration, “Ergonomics Program,” 65 *Federal Register* 68261, November 14, 2000. Although the CRA has been used to disapprove only one rule, it may have other, less direct or discernable effects (e.g., keeping Congress informed about agency rulemaking and preventing the publication of rules that may be disapproved).

turnover in party control of the White House, particularly a turnover in which the incoming President shares a party affiliation with a majority in both houses of Congress—the CRA is more likely to be used successfully. The March 2001 rejection of the ergonomics rule was the result of that set of circumstances. Similar circumstances will take place in 2017 after the start of the 115th Congress and after President-elect Donald J. Trump is sworn into office.

CRA “Reset” Mechanism

Section 801(d) of the CRA provides that, if Congress adjourns its annual session sine die less than 60 legislative days in the House of Representatives or 60 session days in the Senate after a rule is submitted to it, then the periods to submit and act on a disapproval resolution “reset” in their entirety in the next session of Congress.⁴ The purpose of this provision is to ensure that both houses of Congress have sufficient time to consider disapproving rules submitted during this end-of-session “carryover period.”⁵ This provision applies in every session of Congress, but it is of particular relevance in sessions of Congress that coincide with presidential transitions. This provision allows, for a limited time period, a new Congress to consider a joint resolution disapproving a rule issued late in the previous administration. If introduced and considered at the proper time, such a joint resolution cannot be filibustered in the Senate.

The projected second-session meeting schedules of the House and Senate issued by each chamber’s majority leader may be used to estimate the date in 2016 after which final rules submitted to Congress will be subject to the renewed review periods in 2017 described above. The estimated start of the reset period for all rules was determined by counting back from the projected sine die adjournment in the respective chambers—60 days of session in the Senate and 60 legislative days in the House—then taking the earlier of the two dates.

Under this calculation, CRS estimates that agency final rules submitted to Congress after May 30, 2016, will be subject to renewed review periods in 2017 by a new President and a new Congress.⁶ Importantly, however, if the chambers deviate from the schedule projected by the party leaders, these estimates will necessarily change. Furthermore, CRS day count estimates are unofficial and non-binding; the House and Senate Parliamentarians are the sole definitive arbiters of the operation of the CRA mechanism and should be consulted if a formal opinion is desired.

“Major” Obama Administration Rules Potentially Eligible for Consideration under the CRA in 2017

Using this estimated reset date of May 30, 2016, CRS compiled a list of major rules that would fall under this reset period—i.e., rules that could be overturned in the 115th Congress using the CRA.

Table 1 lists the major rules CRS has identified as of November 16, 2016, that could be eligible for the reset mechanism.⁷ To identify these rules, CRS used a two-step process. First, CRS consulted the

⁴ “Legislative days” end each time a chamber adjourns and begin each time it convenes after an adjournment. A “session day” is any calendar day on which a chamber meets, regardless of the length of the session. A pro forma meeting qualifies as a day of session.

⁵ In the following session, the renewed periods for review begin on the 15th day of session in the Senate and the 15th legislative day in the House.

⁶ For a more detailed discussion of the “reset” mechanism and this estimate, see CRS Insight IN10437, *Agency Final Rules Submitted After May 30, 2016, May Be Subject to Disapproval in 2017 Under the Congressional Review Act*, by Christopher M. Davis and Richard S. Beth.

⁷ Importantly, the CRA can be used to overturn both major and non-major rules. This list is limited to major rules because they (continued...)

Government Accountability Office's (GAO's) federal rules database to identify major rules that were issued during calendar year 2016 as of November 16, 2016.⁸ Second, CRS used LIS's "Executive Communications" database to identify when these rules were received in Congress.⁹ As explained above, rules received in Congress after May 30, 2016, could be eligible for consideration under the CRA, but the precise date could fall slightly earlier or later than that depending on the schedules in each chamber for the remainder of the 114th Congress. If the date falls earlier than May 30, there may be additional rules subject to the reset mechanism that are not included on this list.

(...continued)

are of the greatest economic effect and therefore may be of the most interest to Congress, and because of the high volume of non-major rules submitted to Congress.

The CRA defines a major rule as "any rule that the Administrator of the Office of Information and Regulatory Affairs [OIRA] of the Office of Management and Budget [OMB] finds has resulted in or is likely to result in— (A) an annual effect on the economy of \$100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets."

⁸ GAO's federal rules database is available at <http://gao.gov/legal/congressional-review-act/overview>. Under the CRA, agencies are required to submit their rules to GAO; GAO is then required to prepare and submit to Congress a report on each major rule within 15 calendar days of its submission or publication date. This report is to contain "an assessment of the agency's compliance with procedural steps" required for the rule, including any cost-benefit analysis or other analysis under certain statutes such as the Regulatory Flexibility Act and the Unfunded Mandates Reform Act.

⁹ When final rules are submitted to Congress pursuant to the CRA, notice of each chamber's receipt and referral appears in the respective House and Senate sections of the daily *Congressional Record* devoted to "Executive Communications." They are also entered into a database which can be searched using LIS. House communications can be accessed at <https://www.congress.gov/execomh/search.html> and Senate communications at <https://www.congress.gov/execcoms/search.html>.

Table 1. Major Rules Issued by the Obama Administration that are Potentially Eligible for Disapproval under the Congressional Review Act in the 115th Congress

As of November 16, 2016

Title of Rule (As Published in Federal Register)	RIN Number	Agency	Date Rule was Published in Federal Register and Citation	Date Received in Senate and EC Number	Date Received in House and EC Number
Establishment of the Electronic Visa Update System (EVUS)	1651-AB08	Department of Homeland Security, U.S. Customs and Border Protection	Oct. 20, 2016 81 FR 72481	No record identified	Oct. 18, 2016 7326
ONC Health IT Certification Program: Enhanced Oversight and Accountability	0955-AA00	Department of Health and Human Services, Office of the Secretary	Oct. 19, 2016 81 FR 72404	Nov. 15, 2016 7313	Oct. 14, 2016 7191
Clearing Requirement Determination Under Section 2(H) Of The Commodity Exchange Act For Interest Rate Swaps	3038-AE20	Commodity Futures Trading Commission	Oct. 14, 2016 81 FR 71202	No record identified	Oct. 12, 2016 7052
Standards For Covered Clearing Agencies	3235-AL48	Securities And Exchange Commission	Oct. 13, 2016 81 FR 70786	No record identified	Sept. 30, 2016 7089
Medicare And Medicaid Programs; Reform Of Requirements For Long-Term Care Facilities	0938-AR61	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	Oct. 4, 2016 81 FR 68688	No record identified	Sept. 29, 2016 7458
Child Care And Development Fund (CCDF) Program	0970-AC67	Department Of Health And Human Services, Administration For Children And Families	Sept. 30, 2016 81 FR 67438	No record identified	Sept. 23, 2016 6984
Establishing Paid Sick Leave For Federal Contractors	1235-AA13	Department Of Labor, Office Of The Secretary	Sept. 30, 2016 81 FR 67598	No record identified	Sept. 30, 2016 7277
OCC Guidelines Establishing Standards For Recovery Planning By Certain Large Insured National Banks, Insured Federal Savings Associations, And Insured Federal Branches; Technical Amendments	1557-AD96	Department Of The Treasury, Office Of The Comptroller Of The Currency	Sept. 29, 2016 81 FR 66791	No record identified	Sept. 29, 2016 7093
Emergency Preparedness Requirements For Medicare And Medicaid Participating Providers And Suppliers	0938-AO91	Department Of Health And Human Services, Centers For Medicare & Medicaid Services: Medicare And Medicaid Programs	Sept. 16, 2016 81 FR 63860	Sept. 19, 2016 6909	Sept. 13, 2016 6850
Migratory Bird Hunting Regulations On Certain Federal Indian Reservations And Ceded Lands For The 2016-17 Season	1018-BA70	Department Of The Interior, Fish And Wildlife Service	Sept. 9, 2016 81 FR 62404	Nov. 15, 2016 7246	Oct. 5, 2016 7310
Safety And Effectiveness Of Consumer Antiseptics; Topical Antimicrobial Drug Products For Over-The-Counter-Human Use	0910-AF69	Department Of Health And Human Services, Food And Drug Administration	Sept. 6, 2016 81 FR 61106	Sept. 28, 2016 7033	Sept. 22, 2016 6971

Title of Rule (As Published in Federal Register)	RIN Number	Agency	Date Rule was Published in Federal Register and Citation	Date Received in Senate and EC Number	Date Received in House and EC Number
Head Start Performance Standards	0970-AC63	Department Of Health And Human Services, Administration For Children And Families	Sept. 6, 2016 81 FR 61294	Sept. 8, 2016 6797	Sept. 2, 2016 6734
Standards Of Performance For Municipal Solid Waste Landfills	2060-AM08	Environmental Protection Agency	Aug. 29, 2016 81 FR 59332	Sept. 6, 2016 6322	July 22, 2016 6278
Emission Guidelines And Compliance Times For Municipal Solid Waste Landfills	2060-AS23	Environmental Protection Agency	Aug. 29, 2016 81 FR 59276	Sept. 6, 2016 6321	July 22, 2016 6279
Federal Acquisition Regulation; Fair Pay And Safe Workplaces	9000-AM81	Department Of Defense, General Services Administration, And National Aeronautics And Space Administration	Aug. 25, 2016 81 FR 58562	Sept. 6, 2016 6725	Aug. 23, 2016 6711
Medicare Program; Hospital Inpatient Prospective Payment Systems For Acute Care Hospitals And The Long-Term Care Hospital Prospective Payment System & Policy Changes & Fiscal Year 2017 Rates; Quality Reporting Requirements For Specific Providers; Graduate Medical Education; Hospital Notification Procedures Applicable To Beneficiaries Receiving Observation Services; Technical Changes Relating To Costs To Organizations & Medicare Cost Reports; Finalization Of Interim Final Rules With Comment Period On LTCH PPS Payments For Severe Wounds, Modifications Of Limitations On Redesignation By The Medicare Geographic Classification Review Board, & Extensions Of Payments To MDHS And Low-Volume Hospitals	0938-AS77, 0938-AS88, 0938-AS41	Department Of Health & Human Services, Centers For Medicare & Medicaid Services	Aug. 22, 2016 81 FR 56762	Sept. 6, 2016 6378	Aug. 4, 2016 6682
Workforce Innovation And Opportunity Act; Joint Rule For Unified And Combined State Plans, Performance Accountability, And The One-Stop System Joint Provisions; Final Rule	1205-AB74	Department Of Labor, Employment And Training Administration, And Department Of Education	Aug. 19, 2016 81 FR 55792	Sept. 6, 2016 6648	Aug. 19, 2016 6385
Workforce Innovation And Opportunity Act	1205-AB73	Department Of Labor, Employment And Training Administration	Aug. 19, 2016 81 FR 56072	Sept. 6, 2016 6649	Aug. 19, 2016 6384

Title of Rule (As Published in Federal Register)	RIN Number	Agency	Date Rule was Published in Federal Register and Citation	Date Received in Senate and EC Number	Date Received in House and EC Number
Medicare Program; Prospective Payment System And Consolidated Billing For Skilled Nursing Facilities For FY 2017, SNF Value-Based Purchasing Program, SNF Quality Reporting Program, And SNF Payment Models Research	0938-AS75	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	Aug. 5, 2016 81 FR 51970	Sept. 6, 2016 6381	Aug. 4, 2016 6687
Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System For Federal Fiscal Year 2017	0938-AS78	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	Aug. 5, 2016 81 FR 52056	Sept. 6, 2016 6379	Aug. 4, 2016 6680
Medicare Program; FF 2017 Hospice Wage Index And Payment Rate Update And Hospice Quality Reporting Requirements	0938-AS79	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	Aug. 5, 2016 81 FR 52144	Sept. 6, 2016 6377	Aug. 4, 2016 6679
Margin And Capital Requirements For Covered Swap Entities	3052-AC69	Department Of The Treasury, Office Of The Comptroller Of The Currency; Federal Reserve System; Federal Deposit Insurance Corporation; Farm Credit Administration; Federal Housing Finance Agency	Aug. 2, 2016 81 FR 50605	Sept. 6, 2016 6211	July 28, 2016 6347
Medicare Program; FY 2017 Inpatient Psychiatric Facilities Prospective Payment System--Rate Update	0938-AS76	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	Aug. 1, 2016 81 FR 50502	Sept. 6, 2016 6380	Aug. 10, 2016 6678
National School Lunch Program And School Breakfast Program: Nutrition Standards For All Foods Sold In School As Required By The Healthy, Hunger-Free Kids Act Of 2010	0584-AE09	Department Of Agriculture, Food And Nutrition Service	July 29, 2016 81 FR 50132	Sept. 6, 2016 6226	Aug. 5, 2016 6389
Revised Critical Infrastructure Protection Reliability Standards	No RIN provided	Department Of Energy, Federal Energy Regulatory Commission	July 29, 2016 81 FR 49878	Sept. 6, 2016 6273	Aug. 5, 2016 6489
Amendments To The Commission's Rules Of Practice	3235-AL87	Securities And Exchange Commission	July 29, 2016 81 FR 50212	Sept. 6, 2016 6258	July 19, 2016 6195
Disclosure Of Payments By Resource Extraction Issuers	3235-AL53	Securities And Exchange Commission	July 27, 2016 81 FR 49360	July 7, 2016 6059	June 30, 2016 5917
Migratory Bird Hunting; Seasons And Bag And Possession Limits For Certain Migratory Game Birds	1018-BA70	Department Of The Interior, Fish And Wildlife Service	July 25, 2016 81 FR 48648	No record identified	No record identified

Title of Rule (As Published in Federal Register)	RIN Number	Agency	Date Rule was Published in Federal Register and Citation	Date Received in Senate and EC Number	Date Received in House and EC Number
Oil And Gas And Sulfur Operations On The Outer Continental Shelf--Requirements For Exploratory Drilling On The Arctic Outer Continental Shelf	1082-AA00	Department Of The Interior, Bureau Of Safety And Environmental Enforcement, Bureau Of Ocean Energy Management	July 15, 2016 81 FR 46478	July 14, 2016 6163	July 7, 2016 6014
Medication Assisted Treatment For Opioid Use Disorders	0930-AA22	Department Of Health And Human Services	July 8, 2016 81 FR 44712	July 12, 2016 6127	July 7, 2016 5996
Department Of Labor Federal Civil Penalties Inflation Adjustment Act Catch-Up Adjustments	1290-AA31	Department Of Labor, Employment And Training Administration, Office Of Workers' Compensation Programs, Office Of The Secretary, Wage And Hour Division, Occupational Safety And Health Administration, Employee Benefits Security Administration, Mine Safety And Health Administration	July 1, 2016 81 FR 43430	July 12, 2016 6126	July 5, 2106 6169
General Administrative Regulations; Catastrophic Risk Protection Endorsement; Area Risk Protection Insurance Regulations; And The Common Crop Insurance Regulations, Basic Provisions	0563-AC49	Department Of Agriculture, Federal Crop Insurance Corporation	June 30, 2016 81 FR 42453	No record identified	No record identified
Transition Assistance Program (TAP) For Military Personnel	0790-AJ17	Department Of Defense, Office Of The Secretary	June 28, 2016 81 FR 41803	July 7, 2016 6056	July 11, 2016 5992
Operation And Certification Of Small Unmanned Aircraft Systems	2120-AJ60	Department Of Transportation, Federal Aviation Administration	June 28, 2016 81 FR 42064	July 6, 2016 6052	June 30, 2016 6063
Transit Asset Management; National Transit Database; FTA-2014-0020	2132-AB07	Department Of Transportation, Federal Transit Administration	June 26, 2016 81 FR 48890	Sept. 6, 2016 6453	July 29, 2016 6638
Revision Of Fee Schedules; Fee Recovery For Fiscal Year 2016	3150-AJ66	Nuclear Regulatory Commission	June 24, 2016 81 FR 41171	June 23, 2016 5895	June 22, 2016 5828
Medicare Program; Medicare Clinical Diagnostic Laboratory Tests Payment System	0938-AS33	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	June 23, 2016 81 FR 41036	June 28, 2016 5928	June 24, 2016 5848
James Zadroga 9/11 Victim Compensation Fund Reauthorization Act	1105-AB49	Department of Justice	June 15, 2016 81 FR 38936	July 7, 2016 6081	June 28, 2016 5856

Title of Rule (As Published in Federal Register)	RIN Number	Agency	Date Rule was Published in Federal Register and Citation	Date Received in Senate and EC Number	Date Received in House and EC Number
Energy Conservation Program: Energy Conservation Standards For Battery Chargers	1904-AB57	Department of Energy	June 13, 2016 81 FR 38266	June 28, 2016 5927	June 27, 2016 5853
Energy Conservation Program: Energy Conservation Standards For Dehumidifiers	1904-AC81	Department of Energy	June 13, 2016 81 FR 38338	June 29, 2016 5959	June 28, 2016 5852
Medicare Program; Medicare Shared Savings Program; Accountable Care Organizations--Revised Benchmark Rebased Methodology, Facilitating Transition To Performance-Based Risk, And Administrative Finality Of Financial Calculations	0938-AS67	Department Of Health And Human Services, Centers For Medicare & Medicaid Services	June 10, 2016 81 FR 37950	June 8, 2016 5648	June 7, 2016 5642
Oil And Natural Gas Sector: Emission Standards For New, Reconstructed, And Modified Sources	2060-AS30	Environmental Protection Agency	June 3, 2016 81 FR 35824	No record identified	May 20, 2016 5484
Margin Requirements For Uncleared Swaps For Swap Dealers And Major Swap Participants--Cross-Border Application Of The Margin Requirements	3038-AC97	Commodity Futures Trading Commission	May 31, 2016 81 FR 34818	June 10, 2016 5711	June 8, 2016 5658
Food Labeling: Revision Of The Nutrition And Supplement Facts Labels	0910-AF22	Department Of Health And Human Services, Food And Drug Administration	May 27, 2016 81 FR 33742	June 8, 2016 5650	June 7, 2016 5631
Mitigation Strategies To Protect Food Against Intentional Adulteration	0910-AG63	Department Of Health And Human Services, Food And Drug Administration	May 27, 2016 81 FR 34166	June 8, 2016 5651	June 7, 2016 5646
Food Labeling: Serving Sizes Of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, And Establishing Certain Reference Amounts Customarily Consumed; Serving Size For Breath Mints; And Technical Amendments	0910-AF23	Department Of Health And Human Services, Food And Drug Administration	May 27, 2016 81 FR 34000	June 8, 2016 5652	June 7, 2016 5647
Member Business Loans; Commercial Lending	3133-AE37	National Credit Union Administration	March 14, 2016 81 FR 13530	June 8, 2016 5676	June 8, 2016 5667
Removal Of Mandatory Country Of Origin Labeling Requirements For Beef And Pork Muscle Cuts, Ground Beef, And Ground Pork	0581-AD29	Department Of Agriculture, Agricultural Marketing Service	March 2, 2016 81 FR 10755	April 5, 2016 4757	No record identified

Source: Government Accountability Office Federal Rules Database, at <http://gao.gov/legal/congressional-review-act/overview>; and the Legislative Information System's "Executive Communications" database, at <https://www.congress.gov/execomh/search.html> (House communications) and <https://www.congress.gov/execcoms/search.html> (Senate communications).

Notes: The date of receipt in Congress is the later of the two dates that the rule was received in each chamber. Dates in the final three columns vary because an agency may send a rule to the Office of the Federal Register at any time for publication, while dates of receipt in Congress can depend upon when the agency sends the rule to Congress and the congressional schedule.

Rules included in the table were listed in GAO's federal rules database as of November 16, 2016. CRS checked the "Executive Communications" database for dates of receipt in each chamber on November 16, 2016.

The citation "No record identified" indicates that CRS was unable to locate any record in the House or Senate Executive Communications Databases indicating that the final rule in question had been received in that chamber.