

Insight



Here are the Major Rules Congress Could Repeal in January

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With President-elect Donald Trump and Republican majorities in both the House and Senate, the executive and legislative branches are now unified under a single party for the first time since Democratic control in 2010. The Congressional Review Act (CRA), [which allows Congress](#) to repeal major regulations within a certain timeframe, is a potentially powerful tool President-elect Trump will have at his disposal. Utilizing the CRA, Congress and President Trump could potentially repeal at least 48 major regulations with, at a minimum, total regulatory costs of more than \$42 billion and 53 million hours of paperwork.

The leaders of both branches are generally on the same page when it comes to the regulatory state. Congressional Republicans have posed a bevy of [regulatory reform bills](#) and attempted CRA resolutions in recent years, although they have universally met President Obama's veto pen. During his campaign, Donald Trump called for substantial cuts in regulatory burdens – including a [proposed 70 to 80 percent reduction](#). There have been limited details from his campaign (and now transition) team on the framework of this repeal process, but resolutions of disapproval under the CRA would likely be a helpful vehicle for deregulation.

As AAF has [previously highlighted](#), the CRA provides Congress with one possible way to constrain the regulatory state. Under the law, both chambers of Congress can pass a Joint Resolution of Disapproval that nullifies a major rule. This has only been used [once successfully](#), for a Department of Labor ergonomics rule after the presidential transition in 2001. Generally, a sitting President has limited incentive or desire to undo their own rulemakings. However, there can be a carryover period in which rules promulgated within 60 legislative or session days under one administration can face scrutiny from their successor and Congress. Since this period is measured in legislative days, it can encompass rules from far earlier in the election year.

AAF previously estimated the cut-off for that period at [May 17th, 2016](#), although the current day is May 27th, if Congress keeps its current schedule. It is difficult to be entirely certain of that date, however, as it depends on the actual end of the legislative session (something unknowable until Congress adjourns). For instance, if Congress were to convene for a shorter-than-expected “lame duck” session in December, that would move the cut-off earlier in the year. Also, since the law starts the carryover period on [“the later of the date”](#) between a rule's official publication and its receipt by Congress (often one to two weeks after publication), even some rules published before this “Regulation Day” are ripe for CRA action.

For the purposes of this analysis, we've included all currently-designated “major” final rules since the start of May 2016. Together, those rules impose more than \$42.5 billion in total costs, \$6.5 billion in annualized costs, and 53 million paperwork burden hours. Below are the ten most expensive of those rules:

Rule	Total Cost (\$Million)	Paperwork Hours
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Head Start Performance Standards	\$5,632	1,019,473
Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed	\$4,300	673,600
Food Labeling: Revision of the Nutrition and Supplement Facts Labels	\$4,300	2,002,572
Medicare and Medicaid Programs; Reform of Requirements for Long-Term Care	\$3,107	1,945,628
Child Care and Development Fund (CCDF) Program	\$2,968	26,800
Overtime Rule	\$2,925	2,507,338
Operation and Certification of Small Unmanned Aircraft Systems	\$2,555	3,453,814
Customer Due Diligence Requirements for Financial Institutions	\$2,500	7,041,289
Exploratory Drilling on the Arctic Outer Continental Shelf	\$2,050	3,930
Disclosure of Payments by Resource Extraction Issuers	\$1,291	217,408
<u>Totals</u>	<u>\$31.6 billion</u>	<u>18.9 million hours</u>

There are even more rules that could be included in this group as well. Although they don't yet have an official "major rule report" from the Government Accountability Office (GAO), rules like EPA's Phase 2 Heavy Duty Vehicle Efficiency Standards and SEC's Joint Industry Plan are clearly major and impose additional total costs of [\\$29.3 billion](#) and [\\$2.4 billion](#), respectively. In addition, considering the electoral developments, one can expect a surge of so-called "midnight regulations" from now until Inauguration Day. [Recent reports](#) say that some environmental rules are on their way, including a rule on natural gas venting where the proposed version estimated [\\$1.4 billion](#) in total costs. According to the administration's own Unified Agenda, rules such as [HHS's restrictions on tanning lamps](#) and [Federal Reserve requirements for Systemically Important Financial Institutions](#) could impose costs of [\\$1.1 billion](#) and [\\$1.5 billion](#), respectively.

Conclusion

Last Tuesday's result was among the more stunning political developments in recent memory. With the stars aligning for Republican leaders, this could lead to major policy changes for regulation. Republicans have the opportunity to enact regulatory reform on a scale not witnessed since President Reagan. CRA disapproval resolutions seem poised to be a significant part of those plans. Although it is unlikely that Congress will cash in all its political capital to this end, several high-profile major rules – and their sizable burdens – could go by the wayside in 2017.