



BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

# The Congressional Review Act (CRA)

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# Introduction



**9 counties**  
**101 cities**  
**8 million people**

**Presenter:**  
**Alan Abbs, Legislative Officer**

## **Bay Area Air Quality Management District**

Established in 1955 by State Law  
Delegated Authority to Implement Federal and State Laws  
24-Member Board of Local Elected Officials

## **Mission Statement**

The Air District aims to create a healthy breathing environment for every Bay Area resident while protecting and improving public health, air quality, and the global climate.

# Presentation Outline



- What is the Congressional Review Act (CRA)?
- When was it enacted?
- How does the CRA work?
- When it is likely to be successful?
- Successful Attempts
- Unsuccessful Attempts
- Role of the Government Accountability Office (GAO)
- Final Thoughts
- Questions/Discussion

# What is the CRA?



- Codified in [5 U.S.C. §§ 801-808](#).
- Is a tool Congress can use to overturn certain federal agency actions.
- Requires agencies to report issuance of “rules” to Congress.
- Provides procedures to consider legislation to overturn that rule.

# When Was it Enacted?



- Part of Newt Gingrich’s “Contract with America” Advancement Act of 1996.
  - H.R. 3136 (Archer – R-TX-7); [Public Law No: 104-121](#)
  - S. 942 (Bond – R-MO)
- Signed into law by President Clinton on March 29, 1996.
  - Also, increased public debt limit from \$4.9 trillion (T) to \$5.5T
  - Votes: House (328-91) | Senate (100-0)

# How Does the CRA Work?



- Agencies must report the issuance of “rules” to Congress.
- What is a “rule” for purposes of CRA?
  - Major rules, non-major rules, interim final rules.
  - May include agency actions not subject to traditional notice-and-comment rulemaking, such as guidance documents and policy memoranda.
  - Does not apply to presidential actions or to non-rule agency actions such as orders.
  - \*\*\*Members can ask Governmental Accountability Office (GAO) for legal opinion on whether something is a rule for purposes of CRA.

# How Does the CRA Work? (cont.)



- Once a rule is submitted (or opined on by GAO), a 60-day clock starts.
- 60 days of continuous session, which does not include adjournments of 3 days or longer.
- Disapproval resolutions must be submitted before end of 60-day window.
- “Lookback” Mechanism for new sessions of Congress.

# How Does the CRA Work? (cont.)



- Disapproval resolutions go through typical Committee referral and Floor vote process.
- Senate version can not be filibustered.
- Majority vote for both houses.
- Vice President can break a tie in the Senate.
- If passed in both houses, it is sent to President for signature.



# How Does the CRA Work? (cont.)



- If enacted, the rule “shall be treated as though such rule had never taken effect.”
- If the rule has not yet gone into effect, it will not take effect.
- Subject rule “may not be reissued in substantially the same form, and a new rule that is substantially the same ... may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution.”
- Not subject to judicial review.

# When is it Likely to be Successful?



- Changes in Administration to coincide with same party rule in Congress.
  - George W. Bush Administration (2001-2002)
  - Obama Administration (2009-2010)
  - Trump Administration (2017-2018)
  - Biden Administration (2021-2022)

# Successful Attempts



## How many times has the CRA been used successfully?

- One time in 2001
- Sixteen times in 2017
  - Surface mining rule related to stream protection.
  - Bureau of Land Management land use rules.
- Three times in 2021
  - Oil and gas emission standards for new, reconstructed, and modified sources.

# Unsuccessful Attempts



**How many times has the CRA unsuccessfully been attempted (i.e. vetoed)?**

- Five vetoes in 2015-2016
  - Waters of U.S. rule.
  - Greenhouse gas performance standards for electric generating units (EGUs).
  - Carbon pollution emission guidelines for EGUs.
- One veto in 2020
- Five vetoes (so far) in 2023
  - Waters of U.S. rule.
  - Waivers and modifications of student loans.
  - Heavy-Duty Engine Standards.
- Four resolutions in process in 2023
  - Three endangered species rules.

# Role of the Government Accounting Office (GAO)



- Known primarily for their role as an auditor in appropriations matters.
- Non-partisan
- With CRA, GAO role has expanded to include providing legal opinions on which agency actions are “rules.”
  - CRA statute does not actually direct GAO to perform this function.
  - Legal opinion is just an opinion.
  - Legal opinions are made public and provide valuable body of knowledge to agencies, legislators, and public.

# Final Thoughts



- Why else would a Congressman attempt to use the CRA or ask for GAO opinion ?
  - Genuine uncertainty about whether something is a rule.
  - Reach back and potentially make something vulnerable that has been determined to be a “rule” but not submitted to Federal Register.
  - Send a political “signal” to agency, public, or other lawmakers.
  - Protection of an agency action by getting a “no rule” opinion, or by starting the clock on a “rule” under favorable political conditions.

# Final Thoughts, (cont.)



- Where's the balance?
  - Doesn't seem to be a statute of limitations on requesting GAO legal opinion.
  - Given Congress's ability to overturn/slow agency actions through laws or appropriations, can the CRA be abused?
- Prohibition on future rulemaking in same area may cause some administrations and Congress to be more inclined to use CRA, and some less inclined.



# Questions / Discussion

## CONTACT

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