

Congressional Review Act: Allan Gates (Mitchell Williams Law Firm) American College of Environmental Lawyers Blog Post



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My law firm partner, Allan Gates, authored a December 7th post on the American College of Environmental Lawyers (“ACOEL”) blog titled:

It Ain’t Over ‘til It’s Over -- The Congressional Review Act & the Search for Zombie Regulations (“Post”)

Allan currently serves as president elect of ACOEL.

Allan’s post provides a brief overview of the Congressional Review Act (“CRA”). The statute provides Congress the opportunity to review and disapprove final rules of Federal agencies. Since enacted almost twenty years ago, only one regulation had been disapproved.

Allan cites as a contrast the first 100 days of the Trump Administration in which Congress utilized the CRA to disapprove 13 separate regulations. This activity was identified by the Trump Administration as its top accomplishment in the first 100 days.

The focus of Allan’s post is the possible rejection of additional regulations promulgated during the Obama Administration through use of the CRA. As Allan notes, the presumption had been that a key CRA limitation would prevent additional regulation rollbacks of the previous Administration’s rules. The post notes, the limitation is the statute’s:

. . . narrow window of time for introducing resolutions of disapproval (generally 60, legislative days from the date the regulation is received by Congress), and it similarly limits the time within which expedited legislative procedures – including passage by simple majority vote in the Senate – can be used.

The post states that many Federal agencies may have failed to send their rules (potentially hundreds) to Congress to start the 60 day time period. Also noted is the fact that rules subject to CRA’s review may also include some not published in the Federal Register such as:

- unreported interpretive rules
- guidance documents
- etc.

The post discusses conservative activists discussion or interest in potentially utilizing the CRA to address other regulations. Allan identifies three strategies that have been discussed by such activists which include:

- private parties subject to an unreported regulation could argue it has never taken effect
- Trump Administration identifies rules that were never reported and takes the position therefore they have not taken effect
- Trump Administration's identification of such rules having never been reported and encouraging Congress to adopt resolutions of disapproval

The post concludes with reasons why the use of the CRA to address some of these older rules may, in fact, not occur. In addition, Allan cites litigation filed by the Center for Biological Diversity to vacate one CRA resolution and the arguments the organization put forth.

A copy of the post can be downloaded [here](#).