

CONGRESSIONAL REVIEW ACT IMPROVEMENT ACT

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JUNE 5, 2008.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. CONYERS, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 5593]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 5593) to amend title 5, United States Code, to make technical amendments to certain provisions of title 5, United States Code, enacted by the Congressional Review Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5593, the “Congressional Review Act Improvement Act,” amends the Congressional Review Act (CRA) to reduce administrative burdens and duplicative paperwork by repealing the requirement that agencies submit copies of all final rules and reports

thereon to both the House and Senate. The bill instead requires that the House and Senate receive a weekly list of all final rules published in the Federal Register from the Comptroller General, and to have such list printed in the Congressional Record with a statement of referral for each rule. Agencies would still be required to submit copies of final rules and reports thereon to the House and Senate that were not printed in the Federal Register. The bill does not affect the authority of Congress under the CRA to disapprove an agency rule.

BACKGROUND AND NEED FOR THE LEGISLATION

BACKGROUND

The Congressional Review Act currently requires an agency promulgating a rule¹ to submit a report to the House and Senate and to the Comptroller General at the Government Accountability Office (GAO) that includes: (1) a copy of the rule; (2) a concise general statement describing the rule, including whether it is a major rule;² and (3) the proposed effective date of the rule.³ A rule may not take effect if the report is not submitted.⁴ Each House must send a copy of the report to the chairman and ranking minority member of each jurisdictional committee.⁵ In addition, the promulgating agency must submit to the Comptroller General: (1) a complete copy of any cost-benefit analysis; (2) a description of the agency's actions pursuant to the requirements of the Regulatory Flexibility Act⁶ and the Unfunded Mandates Reform Act of 1995;⁷ and (3) any other relevant information required under any other Act or Executive Order. Such information must also be made "available" to the House and Senate.⁸

The CRA authorizes Congress, pursuant to a joint resolution of disapproval, to disapprove an agency rule that it determines to be too burdensome, excessive, inappropriate, duplicative, or otherwise objectionable. Such a resolution must be introduced within the specified review period, which is at least 60 days.⁹ For a joint resolution of disapproval to become law, it must pass both Houses of Congress and be signed by the President. If a joint resolution is enacted into law, the rule is deemed not to have had any effect at any time.¹⁰ Additionally, the CRA prohibits an agency from reissuing a rule that is substantially the same as a disapproved rule.

The CRA prescribes special expedited procedures for consideration of the joint resolution in the Senate, but does not provide similar procedures in the House.¹¹ After introduction of the joint resolution, it is referred by the Parliamentarian to committees of

¹ The term rule "means the whole or part of an agency statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 804(3) (2007).

² A major rule is defined as a rule that will likely have an annual effect on the economy of \$100 million or more, increase costs or prices for consumers, industries or state and local governments, or have significant adverse effects on the economy.

³ Pub. L. No. 104-121, subtitle E, 110 Stat. 857-74 (1996) (codified as 5 U.S.C. §§ 801-08).

⁴ 5 U.S.C. § 801(a)(1)(A) (2007).

⁵ 5 U.S.C. § 801(a)(1)(C) (2007).

⁶ Pub. L. No. 96-353 (1980).

⁷ Pub. L. No. 104-4 (1995).

⁸ 5 U.S.C. § 801(a)(1)(B) (2007).

⁹ 5 U.S.C. § 801(a)(3)-(4) (2007).

¹⁰ 5 U.S.C. § 801(f) (2007).

¹¹ 5 U.S.C. § 802(c) (2007).

jurisdiction. In the Senate, if the committee has not reported it within 20 calendar days, the resolution can be discharged upon a petition supported by 30 members, and placed on the calendar.¹² In the House, there is no such petition provision, and the resolution would be treated like any bill.

If the review period has expired, Congress may still seek to override an agency's rule through the enactment of legislation to achieve that objective. The legislation, however, would not have the various procedural enhancements provided for under the CRA. For example, the Senate fast track procedures, the automatic retroactivity of rule nullification, and the prohibition against agency reissuance would not apply.

Since the CRA was signed into law in 1996, 47 joint resolutions of disapproval have been introduced relating to 35 rules.¹³ None of the joint resolutions introduced in the House was ultimately passed by the House. Four of the Senate joint resolutions passed the Senate: (1) the nullification of the Occupational Safety & Health Administration's (OSHA) controversial ergonomics standards in March 2001;¹⁴ (2) the Federal Communication Commission's 2003 rule relating to broadcast media ownership;¹⁵ (3) a 2005 Department of Agriculture rule relating to the establishment of minimal risk zones for introduction of Mad Cow Disease;¹⁶ and (4) the Federal Communication Commission's 2008 rule relating to broadcast media ownership.¹⁷

Only one of those Senate-passed joint resolutions, the March 2001 nullification of the OSHA ergonomics standards, also passed the House and was signed into law by the President.¹⁸ In that instance, there was an unusual confluence of factors, including that: (1) the subject matter of the rule was "contentious;" (2) the rule had been promulgated toward the end of an outgoing administration; (3) the current President, who was of the other political party, supported repealing the rule; and (4) the President and the majorities in both Houses of Congress were of the same political party.¹⁹ In future situations where those or similarly potent factors combine, it is likely that the new rule will come to the attention of Congress even without the elaborate notification process.

NEED FOR THE LEGISLATION

While only one disapproval resolution has been signed into law throughout the history of the CRA, those charged with implementing this Act have faced significant administrative burdens. As of March 31, 2008, the Comptroller General has submitted rules and reports pursuant to section 801(a)(2)(A) of the CRA to Congress on 731 major rules, and has cataloged 46,809 non-major

¹²*Id.*

¹³Morton Rosenberg, Congressional Review of Agency Rulemaking: An Update and Assessment of the Congressional Review Act After Ten Years, Congressional Research Service Report for Congress, RL 30116, at 6 (May 8, 2008).

¹⁴S. J. Res. 6, 107th Cong. (2001) (enacted).

¹⁵S. J. Res. 17, 108th Cong. (2003).

¹⁶S. J. Res. 4, 109th Cong. (2005).

¹⁷S. J. Res. 28, 110th Cong. (2008).

¹⁸Pub. L. No. 107-5 (2001).

¹⁹Morton Rosenberg, Congressional Review of Agency Rulemaking: An Update and Assessment of the Congressional Review Act After Ten Years, Congressional Research Service Report for Congress, RL 30116, at 1 (May 8, 2008).

rules.²⁰ According to the House Parliamentarian, in the 103rd Congress—the last full Congress before the enactment of the CRA—the executive departments transmitted 4,135 communications to the Speaker of the House that warranted referral to committees.²¹ In the 109th Congress, that number had risen to 10,742.²² As the Parliamentarian testified last year at an oversight hearing on the CRA before the Subcommittee on Commercial and Administrative Law:

This flow of paper poses a significant increment of workload. Although it is relatively easy to identify the appropriate committees of referral for the vast majority of these communications, the sheer volume of them affects not only the parliamentarians who must assess their subject matter but also the clerks who must move the paper and account for dates of transmittal.²³

In addition, agencies must often resort to having copies of their rules hand-delivered by courier to the House and Senate in order to comply with the CRA and the standards regarding communications transmitted to Congress.²⁴ Rules are frequently returned to the agency, delaying their implementation, for failing to comply with the CRA or these other congressional requirements.²⁵

HEARINGS

The Committee on the Judiciary held no hearings on H.R. 5593. The Committee's Subcommittee on Commercial and Administrative Law did hold 1 day of hearings, however, on the Congressional Review Act, on November 6, 2007. Testimony was received from the Honorable John V. Sullivan, Parliamentarian, House of Representatives; Morton Rosenberg, Specialist in American Public Law, Congressional Research Service; and Professor Sally Katzen, George Mason University School of Law. Mr. Sullivan also testified in the 109th Congress before the Subcommittee on Commercial and Administrative Law about the burdens of implementing the CRA on the Office of the Parliamentarian, which was the same topic of his November 6, 2007 testimony.²⁶ Mr. Sullivan's predecessor, Charles W. Johnson, testified in the 105th Congress before the Subcommittee on Commercial and Administrative Law on the same issue.²⁷

COMMITTEE CONSIDERATION

On April 24, 2008, the Subcommittee on Commercial and Administrative Law met in open session and ordered the bill, H.R. 5593,

²⁰*Id.* at 6.

²¹*Oversight of the Congressional Review Act: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 110th Cong. (2007) (statement of John V. Sullivan, Parliamentarian, U.S. House of Representatives).

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵*Id.* For example, agency submissions to the House of Representatives are often rejected because they lack a valid original signature on the transmittal letter, do not have a completed Congressional Review Act Form with an original signature, or are missing pertinent enclosures.

²⁶*10th Anniversary of the Congressional Review Act: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 109th Cong. 38–42 (2006) (statement of John V. Sullivan, Parliamentarian, U.S. House of Representatives).

²⁷*Congressional Review Act: Hearing Before the Subcomm. on Commercial and Administrative Law of the H. Comm. on the Judiciary*, 105th Cong. 12–21 (1997) (statement of Charles W. Johnson III, Parliamentarian, U.S. House of Representatives).

favorably reported, without amendment, by voice vote, a quorum being present. On April 30, 2008, the Committee met in open session and ordered the bill, H.R. 5593, favorably reported without amendment, by voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 5593.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 5593, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 5, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5593, the "Congressional Review Act Improvement Act."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 5593—Congressional Review Act Improvement Act.

H.R. 5593 would reduce reporting requirements for agencies that submit information to the legislative branch under the Congress-

sional Review Act (CRA). CBO estimates that implementing H.R. 5593 would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of State, local, and tribal governments.

Under current law, all agencies that promulgate a new rule must submit a report to the House of Representatives, the Senate, and the Government Accountability Office (GAO) that contains a copy of the rule, a concise statement describing the rule, and its proposed effective date. H.R. 5593 would amend CRA to remove the requirement that agencies submit multiple copies of each new rule to the Congress. Instead, federal agencies would only submit rules and related documents to GAO, which would then provide the Congress with a weekly list.

CBO estimates that reducing the reporting requirements under CRA would not have a significant impact on agencies' budgets because they would continue to prepare the same reports.

The CBO staff contact for this estimate is Matthew Pickford, who can be reached at 226–2860. This estimate was approved by Theresea Gullo, Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 5593 would relieve unnecessary administrative burdens and reduce duplicative paperwork by repealing the requirement that agencies submit rules and reports to both the House and Senate even when they are published in the Federal Register.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 5593 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short title. Section 1 sets forth the short title of the bill as the “Congressional Review Act Improvement Act.”

Sec. 2. Technical Amendments to the Congressional Review Act. Section 2(a)(1) repeals the requirement that agencies submit rules and reports that are published in the Federal Register to both the House and Senate. It designates the Comptroller General as the recipient of all of these materials. Section 2(a)(1) also repeals the requirement that the House and Senate provide copies of the rules

and reports to the chairman and Ranking Member of each committee with responsibility for review of the rules.

Section 2(a)(2) amends subsection (e)(1) of the Congressional Review Act to require the Comptroller General to submit to the House and Senate a weekly report listing all rules received since the last report was submitted. The report must include a notation indicating whether or not the rule is a major rule. Section 2(a)(2) requires the House and Senate to publish in the Congressional Record each report received from the Comptroller General and a statement of referral to the committee or committees with responsibility for review of that rule.

Section 2(b) makes various conforming changes. Section 2(b)(1) amends the provision in the CRA specifying when a major rule takes effect to specify that, assuming no resolution of disapproval is enacted, the rule takes effect on the date occurring 60 days after the date when the Comptroller General receives the report or the rule is published in the Federal Register, or on the date the rule would otherwise take effect, whichever is later. Section 2(b)(2) provides that a non-major rule takes effect after submission to the Comptroller General. Section 2(b)(4) specifies that the time when a joint resolution of disapproval can be introduced begins when the report is received by the Comptroller General.

Section 2(c) provides that the amendments in this bill become effective 60 days after the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

* * * * *

§ 801. Congressional review

(a)(1)(A) Before a rule can take effect, the Federal agency promulgating such rule shall submit to [each House of the Congress and to] the Comptroller General a report containing—

(i) * * *

* * * * *

(B) On the date of the submission of the report under subparagraph (A), the Federal agency promulgating the rule shall submit to the Comptroller General [and make available to each House of Congress]—

(i) * * *

* * * * *

[(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.]

* * * * *

(3) A major rule relating to a report submitted under paragraph (1) shall take effect on the latest of—

(A) the later of the date occurring 60 days after the date on which—

(i) the [Congress] *Comptroller General* receives the report submitted under paragraph (1); or

* * * * *

(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to [Congress] *the Comptroller General* under paragraph (1).

* * * * *

(d)(1) * * *

(2)(A) * * *

(B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to [Congress] *the Comptroller General* before a rule can take effect.

* * * * *

[(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

[(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

[(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

[(B) a report on such rule were submitted to Congress under subsection (a)(1) on such date.

[(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.]

(e)(1) The Comptroller General shall submit to each House of Congress a weekly report containing a list of each rule received by the Comptroller General pursuant to subsection (a) since the last such report was submitted. The report shall include a notation for each such rule indicating whether or not the rule is a major rule.

(2) The Speaker of the House of Representatives shall cause to be published in the Congressional Record, in that portion of the Record relating to the proceedings of the House of Representatives, each report received from the Comptroller General under paragraph (1) since the last such publication in the House portion of the Record and, for each rule listed in such report, a statement of referral by the Speaker to the committee or committees of the House with responsibility for review of that rule.

(3) *There shall be published in the Congressional Record, in that portion of the Record relating to the proceedings of the Senate, each report received from the Comptroller General under paragraph (1) since the last such publication in the Senate portion of the Record and, for each rule listed in such report, a statement of the referral, if any, to the committee or committees of the Senate with responsibility for review of that rule.*

* * * * *

§ 802. Congressional disapproval procedure

(a) For purposes of this section, the term “joint resolution” means only a joint resolution introduced in the period beginning on the date on which the report referred to in section 801(a)(1)(A) is received by **【Congress】** *the Comptroller General* and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: “That Congress disapproves the rule submitted by the — — relating to — —, and such rule shall have no force or effect.” (The blank spaces being appropriately filled in).

(b)(1) * * *

(2) For purposes of this section, the term “submission or publication date” means the later of the date on which—

(A) the **【Congress】** *Comptroller General* receives the report submitted under section 801(a)(1); or

* * * * *

