

Calendar No. 614

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-311 }

REGULATIONS FROM THE EXECUTIVE IN
NEED OF SCRUTINY ACT OF 2019

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 92

TO AMEND CHAPTER 8 OF TITLE 5, UNITED STATES CODE, TO
PROVIDE THAT MAJOR RULES OF THE EXECUTIVE BRANCH
SHALL HAVE NO FORCE OR EFFECT UNLESS A JOINT
RESOLUTION OF APPROVAL IS ENACTED INTO LAW



DECEMBER 14, 2020.—Ordered to be printed

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DECEMBER 14, 2020.—Ordered to be printed

Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 92]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 92), to amend Chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

The Regulations from the Executive in Need of Scrutiny Act of 2019 (REINS Act) revises the Congressional Review Act of 1996 (CRA) to increase accountability and transparency in the Federal regulatory process.¹ The CRA, which originated from a desire to instill more active congressional control over a rapidly growing body

¹See Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (codified at 5 U.S.C. §§ 801-808); *see also* Regulations from the Executive in Need of Scrutiny Act of 2017, S. 21, 115th Cong. (2017) (CRA was included as part of the Contract with America Advancement Act of 1996).

of Federal regulation, created an expedited process for Congress to review and disapprove any rule after it is issued by a Federal agency.² The REINS Act would amend the CRA by adding a mandatory congressional approval procedure for major agency rules before they can go into effect. By requiring prior congressional approval for major rules, regulations will be more carefully crafted and the regulatory process will be more accountable to the American people.³

II. BACKGROUND AND THE NEED FOR LEGISLATION

Under the CRA, a major rule cannot take effect for at least 60 days after a report on the rule is submitted to both Houses of Congress and the rule itself is published in the *Federal Register* (whichever occurs later).⁴ However, unless Congress acts to formally disapprove the rule, it automatically goes into effect.⁵ The REINS Act would reverse this process for major rules, preventing implementation of major rules that do not receive explicit approval by Congress. A major rule is one that the Office of Information and Regulatory Affairs (OIRA) determines will have a likely annual effect of \$100 million or more on the economy, cause a major increase in costs or prices, or have significant international anti-competitive effects.⁶

The costs and burdens associated with Federal regulatory activity have increased significantly over the last 40 years.⁷ However, despite an increasing regulatory burden,⁸ the legislative structure has not meaningfully changed to commensurately increase accountability. Over the course of the twentieth century, there has been an escalation of congressional delegation of regulatory authority to Federal agencies.⁹ By delegating broad regulatory authority to Federal agencies, Congress has lost legislative control and political accountability over the exercise of that delegated regulatory authority.¹⁰

The purpose of the CRA was to “redress the balance [of power], reclaiming for Congress some of its policymaking authority.”¹¹ The sponsors observed that Congress was increasingly delegating its legislative functions, effectively “abdicat[ing] its constitutional

²H.R. Rep. No. 114–214, pt. 1, at 7 (2015).

³On October 16, 2017, the Committee approved S. 21, Regulations from the Executive in Need of Scrutiny Act of 2017. That bill is substantially similar in purpose to S. 92. Accordingly, this committee report is in large part a reproduction of Chairman Johnson’s committee report for S. 21, S. Rep. No. 116–169.

⁴See 5 U.S.C. §§ 801–808 (2012).

⁵*Id.*

⁶See 5 U.S.C. § 804(2) (2012).

⁷See Jonathan H. Adler, *Placing “Reins” On Regulations: Assessing the Proposed REINS Act*, 16 N.Y.U.J. Legis. & Pub. Pol’y 1, 2–36 (2013).

⁸Aggregate measurement of federal regulatory scope and cost is difficult, though there have been attempts at using a structural model to estimate costs, as well as machine-learning methods to “read” the extensive Code of Federal Regulations to count the number of regulations. See Bentley Coffey et al., *The Cumulative Cost of Regulations* (Mercatus Ctr., Working Paper, April 2016), <https://www.mercatus.org/system/files/Coffey-Cumulative-Cost-Regs-v3.pdf> (“Had regulation been held constant at levels observed in 1980, our model predicts that the economy would have been 25 percent larger by 2012 . . . or about \$13,000 per capita); see also Omar Al-Ubaydli & Patrick A. McLaughlin, *RegData: A Numerical Database on Industry-specific Regulations for All United States Industries and Federal Regulations, 1997–2012*, 11 Reg. & Governance 1, 109–123 (2017).

⁹Adler, *supra* note 7.

¹⁰*Id.*

¹¹142 Cong. Rec. 96, 6922, 6926 (1996) (Joint Explanatory Statement of House and Senate sponsors for CRA).

role.”¹² Previous Congresses have contemplated other means of disapproving of Executive actions vis-à-vis delegated powers, employing various means to assert authority over Federal agencies and restore legislative control.¹³ These means have included everything from ordinary congressional oversight activities to the use of the unicameral legislative veto, which goes back to 1932.¹⁴ On the latter tool, “the Supreme Court struck down any procedure where executive action could be overturned by less than the full process required under the Constitution to make laws.”¹⁵ The CRA outlines a process similar to a legislative veto, but which requires participation of both Houses of Congress and the President.

Despite its conceptual intentions, the CRA has not had much success reigning in the pace of regulations promulgated by Federal agencies.¹⁶ Since the enactment of the CRA, agencies have issued more than 95,000 new final Federal regulations,¹⁷ over 1,700 of which are major rules.¹⁸ However only a small fraction have received some form of congressional action via a congressional resolution—to date only 23 have been passed by both chambers and sent to the President; of those, only 17 have been signed into law.¹⁹

One limitation of the CRA is that it forces Congress to take its own initiative to overturn any regulations of which it disapproves.²⁰ Additionally, the CRA essentially requires a super-majority in Congress to overturn any regulations because a sitting President is likely to veto any joint congressional resolutions meant to disapprove of regulations promulgated by his own administration.²¹

There is a need for further reform of the regulatory process. Under the CRA, unless Congress disapproves of a rule, the rule goes into effect without any congressional action.²² Therefore, as a matter of course, even rules to which many in Congress (perhaps even a majority) may object go unchallenged, and individual members can hold at arm’s length any undesirable outcomes—avoiding

¹² *Id.*

¹³ See H.R. Rep. No. 114–214 at 8.

¹⁴ See Act of June 30, 1932, Pub. L. No. 72–212, ch. 314, § 407, 47 Stat. 382, 414 (repealed 1966); see also James Abourezk, *The Congressional Veto: A Contemporary Response to Executive Encroachment on Legislative Prerogatives*, 52 Ind. L. J. 323, 324 n.5 (1977) (cited in *I.N.S. v. Chadha*, 103 S. Ct. at 2793 (White, J., dissenting)); Laurence H. Tribe, *The Legislative Veto Decision: A Law By Any Other Name?*, 21 Harv. J. on Legis. 1, 3–4, 28 (1984).

¹⁵ 142 Cong. Rec. 96, 6922, 6926 (1996); see also *I.N.S. v. Chadha*, 462 U.S. 919 (1983).

¹⁶ See H.R. Rep. No. 114–214 at 8; see also Adler, *supra* note 7, at 21.

¹⁷ See U.S. Fed. Reg., <https://www.federalregister.gov/> (last visited Aug. 10, 2020) (search Mar. 30, 1996 through Aug. 10, 2020).

¹⁸ See U.S. Gov’t Accountability Off., <http://www.gao.gov/legal/congressional-review-act/> overview (last visited Aug. 10, 2017) (search Mar. 30, 1996 through Aug. 10, 2020).

¹⁹ See generally S.J. Res. 8, 114th Cong. (2015–2016); S.J. Res. 22, 114th Cong. (2015–2016); S.J. Res. 23, 114th Cong. (2015–2016); S.J. Res. 24, 114th Cong. (2015–2016); H.J. Res. 88, 114th Cong. (2015–2016); H.J. Res. 76, 116th Cong. (2019–2020 (the five vetoed resolutions)); see also S.J. Res. 6, 107th Cong. (2001) (enacted as Pub. L. No. 107–5); H.J. Res. 41, 115th Cong. (2017) (enacted as Pub. L. No. 155–4); H.J. Res. 38, 115th Cong. (2017) (enacted as Pub. L. No. 155–5); H.J. Res. 40, 115th Cong. (2017) (enacted as Pub. L. No. 115–8); H.J. Res. 37, 115th Cong. (2017) (enacted as Pub. L. No. 155–11); H.J. Res. 44, 155th Cong. (2017) (enacted as Pub. L. No. 155–12); H.J. Res. 57, 115th Cong. (2017) (enacted as Pub. L. No. 115–13); H.J. Res. 58, 115th Cong. (2017) (enacted as Pub. L. No. 115–14); H.J. Res. 42, 115th Cong. (2017) (enacted as Pub. L. No. 115–17); H.J. Res. 69, 115th Cong. (2017) (enacted as Pub. L. No. 115–20); H.J. Res. 83, 115th Cong. (2017) (enacted as Pub. L. No. 115–21); S.J. Res. 34, 115th Cong. (2017) (enacted as Pub. L. No. 115–22); H.J. Res. 43, 115th Cong. (2017) (enacted as Pub. L. No. 115–23); H.J. Res. 67, 115th Cong. (2017) (enacted as Pub. L. No. 115–24); H.J. Res. 66, 115th Cong. (2017) (enacted as Pub. L. No. 115–35), H.J. Res. 111, 115th Cong. (2017) (enacted as Pub. L. No. 115–74); S.J. Res. 57, 115th Cong. (2018) (enacted as Pub. L. No. 115–172) (the seventeen resolutions overturning rules and signed into law).

²⁰ Adler, *supra* note 7, at 19.

²¹ *Id.*

²² See 5 U.S.C. §§ 801–808 (2012).

“a degree of visible responsibility.”²³ Legal scholar Laurence Tribe described that “through rulemaking . . . exercises of delegated authority change legal rights and privileges no less than do full-fledged laws.”²⁴ This means that changes to and creation of new Federal regulations carry the full force and effect of law, and can proceed without the active participation of the Congress, which may have only vaguely authorized regulation in a particular area months, years, or decades prior.

The REINS Act revises the CRA by inverting this process for major rules by preventing them from going into effect without Congress’ explicit approval. Under the REINS Act, any new major rule would require Congress to pass within 70 session or legislative days of the rule being submitted to Congress, and the President to sign, a joint resolution approving the new major rule before it could take effect. Accordingly, the REINS Act, like the CRA, would require approval by both Houses of Congress and presentment to the President. Then-Judge Stephen Breyer and constitutional law professor Laurence Tribe have opined that a congressional approval mechanism for regulations—similar to that outlined in the REINS Act—would be constitutional.²⁵

The REINS Act provides for a few exceptions to its process. First, a major rule may take effect for a 90-day period without congressional approval if the President determines it is necessary under certain circumstances. Second, any rules affecting budget authority, outlays, or receipts are “assumed to be effective unless [they are] not approved in accordance” with this bill.

Finally, the REINS Act ensures Congress has the ability to efficiently review major rules before they take effect by providing an expedited process. This process includes a prohibition on amendments to congressional joint resolutions of approval, a limited period of up to 15 session days for committees to discharge such resolutions, limited time allowed for floor debate, and a deadline by which both chambers of Congress must take a vote on final passage of the resolution in question.

These processes are designed to increase Congress’ accountability for the content of major rules and foster more deliberation before major rules take effect.

III. LEGISLATIVE HISTORY

Senator Rand Paul (R-KY) introduced S. 92 on January 10, 2019, with Senators Chuck Grassley (R-IA), Todd Young (R-IN), Bill Cassidy (R-LA), Joni Ernst (R-IA), Ted Cruz (R-TX), Roy Blunt (R-MO), Kevin Cramer (R-ND), Tom Cotton (R-AR), James Risch (R-ID), Steve Daines (R-MT), Jerry Moran (R-KS), Mike Braun (R-IN), Marsha Blackburn (R-TN), Pat Toomey (R-PA), Ron Johnson (R-WI), David Perdue (R-GA), Rob Portman (R-OH), John Barrasso (R-WY), James Inhofe (R-OK), Shelley Moore Capito (R-WV), Ben Sasse (R-NE), John Kennedy (R-LA), Cory Gardner (R-CO), Michael Enzi (R-WY), Martha McSally (R-AZ), Pat Roberts (R-KS), Tim Scott (R-SC), Dan Sullivan (R-AK), Marco Rubio (R-FL), Mike Rounds (R-SD), Mike Lee (R-UT), Deb Fischer

²³ Stephen Breyer, *The Legislative Veto After Chadha*, 72 Geo. L.J. 785, 793–96 (1984).

²⁴ Tribe, *supra* note 14, at 9.

²⁵ Breyer, *supra* note 23, at 28; *see also* H.R. Rep. No. 114–214 at 11.

(R-NE), Johnny Isakson (R-GA), and Mitch McConnell (R-KY). Senators Mike Crapo (R-ID), Cindy Hyde-Smith (R-MS), John Boozman (R-AR), John Cornyn (R-TX), Roger Wicker (R-MS), Josh Hawley (R-MO), John Thune (R-SD), Rick Scott (R-FL) later joined as cosponsors. The bill was referred to the Committee. The Committee considered S. 92 at a July 22, 2020 business meeting.

The Committee ordered S. 92 reported favorably on July 22, 2020, by a roll call vote of 8 yeas to 5 nays. Senators voting in the affirmative were Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, and Hawley. Senators voting in the negative were Peters, Carper, Hassan, Harris, Rosen. For the record only, Senator Sinema voted nay by proxy.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill's short title, the "Regulations from the Executive in Need of Scrutiny Act of 2019."

Section 2. Purpose

This section describes the bill's purpose as increasing congressional responsibility in the regulatory process. It states that despite the "Constitution grant[ing] all legislative powers to Congress," such power has been increasingly delegated to non-legislative authorities. By requiring Congress to explicitly vote to approve major regulations, the bill will result in more accountability to the public for the regulations with which they must comply.

Section 3. Congressional review of agency rulemaking

This section amends sections 801 to 807 of the CRA to reflect new requirements for promulgating a Federal regulation as well as new review and approval mechanisms for Congress to consider rules.

The bill amends Section 801 subparagraph (a)(1)(A) of the CRA to require the agency submitting a rule for review to include, in the *Federal Register* and in a report to Congress and the Comptroller General, additional information and analysis pertaining to the rule. Subparagraph (a)(2)(A) adds a requirement that the Comptroller General provide a report to Congress on any major rules which includes "an assessment of whether the major rule imposes any new limits or mandates on private-sector activity." Subparagraph (a)(2)(B) requires Federal agencies to provide information to the Comptroller General relevant to the major rule report.

Subparagraph (a)(3) stipulates that a major rule's effective date is when a joint resolution on the rule is enacted, or the date included in the rule, whichever is later.

Subparagraph (a)(4) stipulates that nonmajor rules take effect only if they are submitted to Congress and Congress does not disapprove of the rule.

Subparagraph (a)(5) prohibits Congress from approving a major rule beyond the period specified in this bill.

Subsection (b) states that Congress must enact a joint resolution of approval within 70 session days from receipt of a major rule for it to take effect.

Subsection (c) allows the President to temporarily put into effect (for up to 90 days) a major rule if he or she makes a determination that the rule is needed due to: an imminent threat to health and safety; enforcement of criminal laws; national security; or implementation of international trade agreement. This determination does not affect the resolution procedures in Section 802.

Subsection (d) provides a new review period for rules submitted during the last 60 session days (in the Senate) or legislative days (in the House) before a Congress adjourns, all the way through to the convening of the next session. The new review window begins as if the rule is first published or submitted on the 15th session day (Senate) or legislative day (House) of the new session and otherwise treated the same as any other rule.

Subsections 802(a) through (h) describe the specific requirements for the content of the joint resolution and expedited procedures related to a resolution of approval for a major rule. They require the majority leader in each chamber to introduce a joint resolution (after receipt of a major rule's report) within three session or legislative days, whichever is applicable, with no amendments allowed at any point. It is then referred to the committee(s) of jurisdiction which has 15 (session/legislative) days to consider the resolution. The subsections further prescribe specific floor procedures in each chamber which limit debate, prevent moving on to other business without disposal of the resolution, or postponing a vote on final passage beyond the allowed review period described in section 801.

Section 803 describes the disapproval procedure for nonmajor rules. This section is largely based on the existing authorities in 5 U.S.C. § 802. Under this section, Congress is given a limited period of time in which to enact a joint resolution of disapproval for a nonmajor rule, otherwise the rule goes into effect by default. The amount of time committees are given to consider and report the rule is changed from 20 calendar days (in current law) to 15 session days which may be the same, longer, or shorter depending on scheduling. This section also describes procedures for floor consideration, including what motions are privileged and allowable time for debate.

Section 804 amends the existing section to provide for new definitions for "nonmajor rule" and "submission or publication date," while retaining definitions for "Federal agency," "major rule," and "rule."

Section 805 adds to the existing section to clarify the scope of allowable judicial review. It states that courts may review whether an agency complied with the requirements under this chapter for a rule to take effect. It also clarifies that should Congress enact a resolution of approval of a rule, that resolution should not be interpreted as changing or expanding the regulatory authority of an agency nor will it enter the judicial record except on the question of whether a rule is in effect.

Section 806 exempts rules and policies concerning monetary policy and the Federal Reserve from this chapter.

Section 807 is the same as existing Section 808 and allows for certain rules (dealing with hunting, fishing, or camping) to take effect when the agency determines they should. The same applies to rules where the agency finds good cause that notice and comment

are “impracticable, unnecessary, or contrary to the public interest” and explains its reasoning for doing so in the rule itself.

Section 4. Budgetary effects of rules subject to section 802 of title 5, United States Code

This section amends the Balanced Budget and Emergency Deficit Control Act of 1985 to state that major rules, which otherwise require approval in this bill, that are budgetary in nature are treated as in effect unless not approved under the major rules procedures.

Section 5. Government Accountability Office study of rules

This section requires the Comptroller General to submit a study within one year of enactment that identifies the number of rules in effect, how many of those rules are major, and an estimate of their aggregate economic cost.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 92 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in *italic*, and existing law in which no change is proposed is shown in *roman*):

UNITED STATES CODE

* * * * *

TITLE 2—THE CONGRESS

* * * * *

CHAPTER 20—EMERGENCY POWERS TO ELIMINATE BUDGET DEFICITS

* * * * *

Subchapter I—Elimination of Deficits in Excess of Maximum Deficit Amount

* * * * *

SEC. 907. THE BASELINE

(a) * * *

(b) * * *

(1) * * *

(2) * * *

(A) * * *

* * * * *

(E) BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.—Any rules subject to the congressional approval procedure set forth in section 802 of chapter 8 of title 5, United States Code, affecting budget authority, outlays, or receipts shall be assumed to be effective unless it is not approved in accordance with such section.

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

Sec.

801. Congressional review.

802. Congressional **[disapproval]** *approval* procedure for major rules.803. **[Special rule on statutory, regulatory, and judicial deadlines]** *Congressional disapproval procedure for nonmajor rules.*

804. Definitions.

805. Judicial review.

806. **[Applicability; severability]** *Exemption for monetary policy.*807. **[Exemption for monetary policy]** *Effective date of certain rules.***[808. Effective date of certain rules.]****SEC. 801. CONGRESSIONAL REVIEW**

(a)

(1)

(A) Before a rule **[can]** *may* take effect, the Federal agency promulgating such rule shall *publish in the Federal Register a list of information on which the rule is based, including data, scientific and economic studies, and cost-benefit analyses, and identify how the public can access such information online, and shall* submit to each House of the Congress and to the Comptroller General a report containing—

(i) a copy of the rule;

(ii) a concise general statement relating to the rule**[, including whether it is a major rule; and]**;(iii) **[the proposed effective date of the rule.]** *a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained*

within subparagraphs (A) through (C) of section 804(2);

(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

(v) the proposed effective date of the rule.

(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) a complete copy of the cost-benefit analysis of the rule, if any[;], *including an analysis of any jobs added or lost, differentiating between public and private sector jobs;*

(ii) the agency's actions [relevant] *pursuant to sections 603, 604, 605, 607, and 609[;] of this title;*

(iii) the agency's actions [relevant] *pursuant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and*

(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

(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.

(2)

(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction [in each House of the Congress] by the end of 15 calendar days after the submission or publication date [as provided in section 802(b)(2)]. The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B) *and an assessment of whether the major rule imposes any new limits or mandates on private-sector activity.*

(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

(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 receives the report submitted under paragraph (1); or

(ii) the rule is published in the Federal Register, if so published;

(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

(i) on which either House of Congress votes and fails to override the veto of the President; or

(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted). *upon enactment of a joint resolution of approval described in section 802 or as provided for in the rule following enactment of a joint resolution of approval described in section 802, whichever is later.*

(4) **[Except for a]A nonmajor rule[, a] rule shall take effect as [otherwise] provided by section 803[law] after submission to Congress under paragraph (1).**

(5) **[Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.]If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either House of Representatives or the Senate.**

(b)

(1) A *major* rule shall not take effect **[(or continue), if] unless the Congress enacts a joint resolution of [dis]approval[,]** described under section 802**[, of the rule].**

(2) **[A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.]If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in subsection (a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.**

(c)

(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a *major* rule **[that would not take effect by reason of subsection (a)(3)] may take effect[,]** for one 90-calendar-day period if the President makes a determination under paragraph (2) and submits written notice of such determination to the Congress.

(2) Paragraph (1) applies to a determination made by the President by Executive order that the *major* rule should take effect because such rule is—

(A) necessary because of an imminent threat to health or safety or other emergency;

(B) necessary for the enforcement of criminal laws;

(C) necessary for national security; or

- (D) issued pursuant to any statute implementing an international trade agreement.
- (3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 **【or the effect of a joint resolution of disapproval under this section】**.
- (d)
- (1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—
- (A) in the case of the Senate, 60 session days, or
- (B) in the case of the House of Representatives, 60 legislative days, before the date the Congress *is scheduled* to adjourn~~【s】~~ a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 *and* 803 shall apply to such rule in the succeeding session of Congress.
- (2)
- (A) In applying sections 802 *and* 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—
- (i) such rule were published in the Federal Register **【(as a rule that shall take effect)】** on—
- (I) in the case of the Senate, the 15th session day~~【,】~~; or
- (II) in the case of the House of Representatives, the 15th legislative day, after the succeeding session of Congress first convenes; and
- (ii) a report on such rule were submitted to Congress under subsection (a)(1) on such date.
- (B) Nothing in this paragraph shall be construed to affect the requirement under subsection (a)(1) that a report shall be submitted to Congress before a rule can take effect.
- (3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).
- 【(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. **】**
- 【(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.】**

[(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.]

SEC. 802. CONGRESSIONAL [REVIEW] APPROVAL PROCEDURE FOR MAJOR RULES

- (a)
- (1) 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] *addressing a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii) that—*[is received by Congress 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).]
- (A) *bears no preamble;*
- (B) *bears the following title (with blanks filled as appropriate): “Approving the rule submitted by _____ relating to _____.”;*
- (C) *includes after its resolving clause only the following (with blanks filled as appropriate): “That Congress approves the rule submitted by _____ relating to _____.”;*
- and
- (D) *is introduced pursuant to paragraph (2).*
- (2) *After a House of Congress received a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii), the majority leader of that House (or his or her respective designee) shall introduce (by request, if appropriate) a joint resolution described in paragraph (1)—*
- (A) *in the case of the House of Representatives, within 3 legislative days; and*
- (B) *in the case of the Senate, within 3 session days.*
- (3) *A joint resolution described in paragraph (1) shall not be subject to amendment at any stage of proceeding.*
- (b)
- [(1)] A joint resolution described in subsection (a) shall be referred [to the committees] in each House of Congress *to the committees having [with] jurisdiction [.] over the provision of law under which the rule is issued.*
- [(2)] For purposes of this section, the term “submission or publication date” means the later of the date on which—
- (A) the Congress receives the report submitted under section 801(a)(1); or
- (B) the rule is published in the Federal Register, if so published.]
- (c) In the Senate, if the committee or committees to which [is referred] a joint resolution described in subsection (a) has *been referred* have not reported [such joint resolution (or an identical joint resolution)] *it* at the end of [20 calendar] *15 session* days after [the submission or publication date defined under subsection (b)(2)] *its* introduction, such committee or committees [may] *shall* be auto-

matically discharged from further consideration of [such joint]the resolution [upon a petition supported in writing by 30 Members of the Senate, and such joint resolution]and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which is was referred, or after such committee or committees have been discharged from further consideration of the resolution.

(d)

(1) In the Senate, when the committee or committees to which a joint resolution is referred [has]have reported, or when a committee or committees [is]are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than [10] 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further [to]limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) * * *

(4) * * *

(e) [In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.] *In the House of Representatives, if any committee to which a joint resolution described in subsection (a) has been referred has not reported it to the House at the end of 15 legislative days after its introduction, such committee shall be discharged from further consideration of the joint resolution, and it shall be placed on the appropriate calendar. On the second and fourth Thursdays of each month it shall be in order at any time for the Speaker to recognize a Member who favors passage of a joint resolution that has appeared on the calendar for at least 5 legislative days to call up that joint resolution for immediate con-*

sideration in the House without intervention of any point of order. When so called up a joint resolution shall be considered as read and shall be debatable for 1 hour equally divided and controlled by the proponent and an opponent, and the previous question shall be considered as ordered to its passage without intervening motion. It shall not be in order to reconsider the vote on passage. If a vote on final passage of the joint resolution has not been taken by the third Thursday on which the Speaker may recognize a Member under this subsection, such vote shall be taken on that day.

(f)

(1) If, before [the passage by one House of] *passing* a joint resolution [of that House] described in subsection (a), [that] *one* House receives from the other [House] a joint resolution [described in subsection (a), then the following procedures shall apply:] *having the same text, then—*

[(1)] (A) The joint resolution of the other House shall not be referred to a committee[.]; *and*

[(2)] With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

[(A)] (B) the procedure in [that] *the receiving* House shall be the same as if no joint resolution had been received from the other House[; but]

[(B)] *until* the vote on [final] passage, [shall be on] *when* the joint resolution [of] *received* from the other House[.] *shall supplant the joint resolution of the receiving House.*

(2) *This subsection shall not apply to the House of Representatives if the joint resolution received from the Senate is a revenue measure.*

(g) *If either House has not taken a vote on final passage of the joint resolution by the last day of the period described in section 801(b)(2), then such vote shall be taken on the day.*

[(g)](h) This section *and section 803* [is] *are* enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such [it is] *are* deemed [a] *to be* part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it [supersedes] *superseding* other rules only [to the extent that it is inconsistent with such rules] *where explicitly so; and*

(2) with full recognition of the constitutional right of either House to change the rules (so far as *they* [relating] *relate* to the procedure of that House) at any time, in the same manner[.], and to the same extent as in the case of any other rule of that House.

SEC. 803. [SPECIAL RULE ON STATUTORY, REGULATORY, AND JUDICIAL DEADLINES] CONGRESSIONAL DISAPPROVAL FOR NONMAJOR RULES

[(a)] In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date

of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).】

(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 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 nonmajor rule submitted by the _____ relating to _____, and such rule shall have no force or effect.' (The blank spaces being appropriately filled in).

【(b) The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.】

(b) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

(d)

(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(e) In the Senate, the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

(1) after the expiration of the 60 session days beginning with the applicable submission or publication date; or

(2) if the report under section 801(a)(1)(A) was submitted during the period referred to in section 801(d)(1), after the expiration of the 60 session days beginning on the 15th session day after the succeeding session of Congress first convenes.

(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply:

(1) The joint resolution of the other House shall not be referred to a committee.

(2) With respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—

(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(B) the vote on final passage shall be on the joint resolution of the other House.

SEC. 804. DEFINITIONS

For purposes of this chapter[—]:

(1) * * *

(2) The term “major rule” means any rule, *including an interim final rule*, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget 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 the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

【The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.】

(3) The term “nonmajor rule” means any rule that is not a major rule.

【(3)】 (4) The term “rule” has the meaning given such term in section 551, except that such term does not include—

(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(5) *The term “submission or publication date”, except as otherwise provided in this chapter, means—*

(A) *in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); and*

(B) *in the case of a nonmajor rule, the later of—*

(i) *the date on which the Congress receives the report submitted under section 801(a)(1); and*

(ii) *the date on which the nonmajor rule is published in the Federal Register, if so published.*

SEC. 805. JUDICIAL REVIEW

(a) No determination, finding, action, or omission under this chapter shall be subject to judicial review.

(b) *Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.*

(c) *The enactment of a joint resolution of approval under section 802 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.*

[SEC. 806. APPLICABILITY; SEVERABILITY

(a) This chapter shall apply notwithstanding any other provision of law.

(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.】

[SEC. 807.] SEC. 806. EXEMPTION FOR MONETARY POLICY

Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee,

[SEC. 808.] SEC. 807. EFFECTIVE DATE OF CERTAIN RULES

Notwithstanding section 801—

(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping【,】; or

(2) any rule *other than a major rule* which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.

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