

The CHAIRMAN (Mr. DONNELLY). The Chair will rule that, for the reason stated by the gentleman from California [Mr. FAZIO], the point of order is sustained.

## § 7. Statutory Rulemaking

In prior years, it was rare for Congress to enact legislation that contained provisions involving congressional rulemaking. The rationale was simply that the procedural rules of the House or Senate are internal matters for each body, to be adopted by simple resolution of each House (rather than by bills or joint resolutions enacted into law).<sup>(1)</sup> Notable exceptions came in the form of major legislative branch reorganizations, such as the Legislative Reorganization Act of 1946<sup>(2)</sup> and the Legislative Reorganization Act of 1970.<sup>(3)</sup>

Beginning in the 1970s, however, Congress began to more fully assert its power of review over executive branch and independent agencies of the government. One method of exercising that power was to provide, in law, the possibility of a “congressional veto” in response to certain actions taken by executive branch officials. One of the more noteworthy early examples of this type of law is the War Powers Resolution,<sup>(4)</sup> which provides procedures for Congress to direct the removal of military forces engaged in hostilities. The intent was to provide a more active role for Congress in supervising the use of military force by the executive branch in the absence of a formal declaration of war. Many other laws containing congressional procedures have been enacted since the 1970s, and the *House Rules and Manual* currently carries 35 separate laws containing some form of expedited procedures for congressional consideration of legislation.<sup>(5)</sup>

As the House adopts new rules at the beginning of each Congress, it is not bound by legislative procedures contained in law unless it affirmatively

---

1. *Parliamentarian's Note*: In the early years of Congress, the House and Senate would sometimes adopt joint rules to govern situations that required concurrent action (primarily addressing the enrollment and certification of legislative measures). 4 Hinds' Precedents § 3430. However, in 1876, these rules were abrogated and subsequent attempts to reinstate them were unsuccessful. 5 Hinds' Precedents §§ 6782–6789. Joint rules are not used in modern practice, with the exception of the law governing the counting of electoral votes for President and Vice President (whose procedures are made a joint rule of the two Houses by incorporation by reference in a concurrent resolution). See Deschler's Precedents Ch. 5 § 3 and Deschler's Precedents Ch. 10 § 2.6. The Committee on Rules retains jurisdiction over joint rules. Rule X, clause 1(o)(1), *House Rules and Manual* § 733 (2019).

2. P.L. 79–601; 60 Stat. 812.

3. P.L. 91–510; 84 Stat. 1140.

4. 50 U.S.C. §§ 1544–1546.

5. *House Rules and Manual* § 1130 (2019).

agrees to be so bound. The House routinely does so in the resolution adopting the standing rules of the House, which typically states that “applicable provisions of law or concurrent resolution that constituted rules of the House” at the end of the previous Congress shall be considered rules of the House in the current Congress.<sup>(6)</sup>

These provisions of law regarding congressional procedure have provided for action by both Houses of Congress (in the form of a joint or concurrent resolution), one House of Congress alone (by simple resolution), or a committee of one of the Houses. However, the Supreme Court’s decision in the *Chadha* case<sup>(7)</sup> rendered unconstitutional certain types of actions that could be taken by one House alone. The Court also affirmed several lower court decisions invalidating provisions involving mere simple or concurrent resolutions, or actions taken by committees of Congress.<sup>(8)</sup> In response, Congress has updated some of these earlier laws to provide that the “congressional veto” may be exercised only by joint resolution signed by the President.<sup>(9)</sup>

The particular procedures vary from statute to statute, but most can be described as expediting some kind of congressional action. For example, statutory procedures may mandate the introduction of some particular piece of legislation (such as a resolution of disapproval) and referral to a particular committee.<sup>(10)</sup> They may also provide deadlines for committees to report legislation back to the House, with discharge procedures available for committees that fail to report.<sup>(11)</sup> Another common procedure contained in such statutes is to give privileged status to particular motions to expedite floor consideration.<sup>(12)</sup> Once on the floor for debate, statutory procedures may restrict the amount of debate,<sup>(13)</sup> who may be recognized to debate,<sup>(14)</sup> and/or what amendments may be offered.<sup>(15)</sup> Finally, statutory procedures may restrict the offering of particular motions that may cause delay, such as the motion to reconsider.<sup>(16)</sup>

While the House has always reiterated its acceptance of these statutory procedures (by affirmatively making them applicable as rules of the House

---

6. See, e.g., 163 CONG. REC. H7 [Daily Ed.], 115th Cong. 1st Sess. (Jan. 3, 2017).

7. *Immigration and Naturalization Service v. Chadha*, 462 U.S. 919 (1983).

8. See, e.g., *Consumer Energy Council of America, et al. v. FERC*, 673 F.2d 425 (D.C. Cir. 1982), *aff’d* 463 U.S. 1216 (1983).

9. See, e.g., P.L. 101–382; 104 Stat. 629.

10. See, e.g., 5 U.S.C. § 910(a).

11. See, e.g., 29 U.S.C. § 1306(b)(4).

12. See, e.g., 42 U.S.C. § 2159(a).

13. See, e.g., 16 U.S.C. § 1823(c)(4)(A).

14. See, e.g., 19 U.S.C. § 2191(f)(2).

15. See, e.g., 42 U.S.C. § 2160e(e)(4)(C).

16. See, e.g., 5 U.S.C. § 912(b).

when adopting the standing rules), nothing prevents the House from altering or waiving those congressional procedures contained in law at a later time. As they operate as mere rules of the House, they can be changed by a simple resolution of the House or other House order, and need not be addressed by the enactment of a law. Thus, the House has, from time to time, adopted resolutions waiving or altering statutory procedures.<sup>(17)</sup> The House has also adopted separate orders (contained in the resolution adopting the standing rules) that waive or alter the applicability of statutory procedures, often for the duration of that Congress.<sup>(18)</sup> The Committee on Rules retains jurisdiction over statutory rulemaking.<sup>(19)</sup>

In the 104th Congress, after a significant reorganization of the committee system, Congress enacted a law to update the names of committees contained in various statutory rulemaking provisions.<sup>(20)</sup>

### *Germaneness*

**§ 7.1 While an amendment affecting the rules of the House to establish a special disapproval procedure would not ordinarily be germane to a proposition which merely granted certain authority to the executive (but did not contain a provision affecting congressional procedures), such an amendment is germane where the section of law being amended by that proposition contains a comparable provision regarding congressional procedures.**

On December 14, 1973,<sup>(21)</sup> the following occurred:

Mr. [Henry] HEINZ [of Pennsylvania]. Mr. Chairman, I offer an amendment to the amendment in the nature of a substitute offered by the gentleman from West Virginia (Mr. STAGGERS).

17. See, *e.g.*, H. Res. 231, 161 CONG. REC. 6002–6003, 114th Cong. 1st Sess. (Apr. 30, 2015); H. Res. 391, 159 CONG. REC. 16368, 113th Cong. 1st Sess. (Oct. 29, 2013); and H. Res. 1092, 154 CONG. REC. 5640, 110th Cong. 2d Sess. (Apr. 10, 2008).
18. See § 8, *infra*.
19. For an exchange of letters between the Committee on Rules and a legislative committee regarding expedited congressional procedures contained in proposed legislation, see 160 CONG. REC. 8528, 113th Cong. 2d Sess. (May 20, 2014).
20. See H.R. 1421, 141 CONG. REC. 10698–99, 104th Cong. 1st Sess. (Apr. 6, 1995). The bill was signed into law as P.L. 104–14; 109 Stat. 186. See also *Precedents* (Wickham) Ch. 6 § 30.4.
21. 119 CONG. REC. 41716–18, 93d Cong. 1st Sess. For similar germaneness rulings involving statutory rulemaking and the rules of the House, see 122 CONG. REC. 12344–48, 94th Cong. 2d Sess. (May 4, 1976), 125 CONG. REC. 28097–99, 96th Cong. 1st Sess. (Oct. 12, 1979), and 128 CONG. REC. 20969, 20975–78, 97th Cong. 2d Sess. (Aug. 13, 1982).

## POINT OF ORDER

Mr. [Robert] PRICE of Texas. Mr. Chairman, a point of order.

The CHAIRMAN.<sup>(22)</sup> The gentleman will state it.

Mr. PRICE of Texas. Mr. Chairman, I thought the agreement was to alternate amendments between members of the Committee and members who are not on the Committee. This is another example of what we have here today.

Mr. HEINZ. Mr. Chairman, I would be happy to withdraw my amendment.

The CHAIRMAN. Permit the Chair to say in respect to the point of order, that the procedure mentioned by the gentleman from Texas was discussed but not agreed to. The Chair had hoped that procedure would be followed.

The Clerk will report the amendment.

The Clerk read as follows:

Amendment offered by Mr. HEINZ to the amendment in the nature of a substitute offered by Mr. STAGGERS. Page 8, after line 18, insert the following new subsection: (e) Section 4 of the Emergency Petroleum Allocation Act of 1973 is amended by inserting at the end thereof the following new subsections:

“(1)(1) The President shall transmit any rule (other than any technical or clerical amendments) which amends the regulation (promulgated pursuant to subsection (a) of this section) with respect to end-use allocation authorized under subsection (h) of this section.

“(2) Any such rule with respect to end-use allocation shall, for purposes of subsections (m) and (n) of this section, be treated as an energy action and shall take effect only if such actions are not disapproved by either House of Congress as provided in subsections (m) and (n) of this section.

“(m) DISAPPROVAL OF CONGRESS.—

“(1) For purposes of this subsection, the term ‘energy action’ means any rule under subsection (1) or repeal of such rule.

“(2) The President shall transmit any energy action (bearing an identification number) to the Congress. The President shall have such action delivered to both Houses on the same day and to each House while it is in session.

“(3) Except as otherwise provided in paragraph (4) of this subsection, an energy action shall take effect at the end of the first period of 15 calendar days of continuous session of Congress after the date on which the plan is transmitted to it unless, between the date of transmittal and the end of the 15-day period, either House passes a resolution stating in substance that that House not favor the energy action.

“(4) For the purpose of subsection (1) of this section—

“(A) continuity of session is broken only by an adjournment of Congress sine die; and

“(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 15-day period.

“(5) Under provisions contained in an energy action, a provision of the plan may be effective at a time later than the date on which the action otherwise is effective.

“(6) An energy action which is effective shall be printed in the Federal Register.

“(n) DISAPPROVAL PROCEDURE.—

“(1) This subsection is enacted by Congress—

“(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a 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 resolutions described by paragraph (2) of this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

“(B) with full recognition of the constitutional right of either House to change the rules (so far as relating 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.

“(2) For the purpose of this subsection, ‘resolution’ means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: ‘That the — does not favor the energy action numbered — transmitted to Congress by the President on , 19 ’, the first blank space therein being filled with the name of the resolving House and the other blank spaces therein being appropriately filled; but does not include a resolution which specifies more than one energy action.

22. Richard Bolling (MO).

“(3) A resolution with respect to an energy action shall be referred to a committee (and all resolutions with respect to the same plan shall be referred to the same committee) by the President of the Senate or the Speaker of the House of Representatives as the case may be.

“(4)(A) If the committee to which a resolution with respect to an energy action has been referred has not reported it at the end of 5 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution with respect to the energy action which has been referred to the committee.

“(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same energy action), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

“(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same energy action.

“(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution with respect to an energy action, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

“(B) Debate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

“(6A) Motions to postpone, made with respect to the discharge from committee, or the consideration of a resolution with respect to an energy action, and motions to proceed to the consideration of other business, shall be decided without debate.

“(B) Appeals from decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution with respect to an energy action shall be decided without debate.” . . .

The Clerk continued to read the amendment.

#### PARLIAMENTARY INQUIRY

Mr. [Robert] ECKHARDT [of Texas] (during the reading). Mr. Chairman, a parliamentary inquiry.

The CHAIRMAN. The gentleman will state his parliamentary inquiry.

Mr. ECKHARDT. Mr. Chairman, would it be in order for me to press my point of order at this time?

The CHAIRMAN. Did the Chair understand the gentleman to say, to press his point of order?

Mr. ECKHARDT. Yes, Mr. Chairman. Would it be in order for me to urge my point of order at this time?

The CHAIRMAN. The Chair feels that the reading of the amendment should be concluded. . . .

#### POINT OF ORDER

Mr. ECKHARDT. Mr. Chairman, I insist on my point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. ECKHARDT. Mr. Chairman, my point of order is that the amendment is not germane to the amendment in the nature of a substitute. Further, the amendment is not germane to the material of the bill.

I should further like to argue on the point of order if I may be heard at this time.

The CHAIRMAN. The gentleman will proceed.

Mr. ECKHARDT. Mr. Chairman, what the amendment purports to do is create additional machinery with respect to the allocation section of the bill which is covered in section 103 of that bill so as to provide that the powers which are to be exercised in allocation, including end use allocation, shall be subject to presentation to the Congress during a 1 day period in which, if they are not vetoed by one or the other House, such provisions may be canceled by having been denied by the two Houses.

There is nothing in the original bill or in the amendment that provides for any procedure by which the matter shall be resubmitted to the Congress. There is nothing in the amendment in the nature of a substitute that has any such procedure in it.

The amendment offered here provides an extensive amendment of the procedures of both the House and Senate with respect to the manner in which this is accomplished.

I should like to point out to the Chair that this is not a small change in policy or in law but an extremely large one. What it purports to do, in effect, is to change the role of the Presidency and that of the Congress and to afford a special procedure by which this bill reserves to the Congress the administrative position, a position in which as a condition subsequent to the passage of this bill this bill may require a second look at the entire question and a determination on the question of policy by the Congress.

The major thrust of my point of order does not go to any question of constitutionality.

It indicates too the fact that the matter contained herein so sweepingly alters the procedures of the House, and the work to accommodate itself to this peculiar and unusual problem, that it is far beyond the scope of any provision in the bill. It does not in a minor manner change the bill, but it changes it in an extremely substantial manner because it calls upon the House to make a deep and complete policy determination with respect to the question of allocation at a time subsequent to the passage of the bill, and give that policy determination the effect of law as a condition subsequent to its particular enactment.

The CHAIRMAN. Does the gentleman from Pennsylvania (Mr. HEINZ) desire to be heard on the point of order?

Mr. HEINZ. I do, Mr. Chairman.

Mr. Chairman, the gentleman from Texas contends on the one hand that my amendment is not constitutional, and on the other that it is not germane to the bill.

On the first point I would like to indicate, Mr. Chairman, that there are already on the statute books two laws, the War Powers Act, and the Procedure for Approving Executive Reorganizations. They use the same procedure for the two items I mentioned. Therefore I do not feel that the point of constitutionality can stand the test.

Second, the gentleman from Texas argues that my amendment and the disapproval portion thereof is not germane to the bill. Were this the case it would seem to me inconsistent, Mr. Chairman, because we would not have had, as we did 2 days ago, a vote on the Broyhill amendment which included the exact same procedures as exist in my amendment.

Admittedly, section 105 is not section 103 but, nonetheless, both amendments were offered to the amendment in the nature of a substitute, H.R. 11882. I do not believe, therefore, Mr. Chairman, that the point of order has merit.

Mr. ECKHARDT. Mr. Chairman, I should like to urge one other point aside from the germaneness question, and that is that the amendment is out of order because it seeks to amend the Rules of the House.

Mr. HEINZ. Mr. Chairman, if I may be heard further, I just do not think that the gentleman from Texas is correct. What is in this amendment is simply no different from writing into the bill, which we could do at any time, for any section, a provision which might say “notwithstanding anything in Section 103 or any other section, the Executive Branch has to come back to the Congress for enactment or approval or determination, or anything.”

The CHAIRMAN (Mr. [Richard] BOLLING [of Missouri]). The Chair is prepared to rule.

The gentleman from Texas (Mr. ECKHARDT) makes a very interesting and strong argument. The Chair in its ruling is persuaded that the question is a narrow question. The Chair does not rule on the constitutional questions raised in this argument; but there are two aspects of the matter that the Chair takes into consideration in its decision. One, which the Chair believes to be the lesser one, is the fact that in the original bill there is a similar provision which in turn was offered as an amendment to the amendment in the nature of a substitute. But the Chair relies primarily on the fact that the amendment offered by the gentleman from Pennsylvania (Mr. HEINZ) is in fact an amendment to section 4 of Public Law 93–159, the Emergency Petroleum Allocation Act which, in a different manner, does provide for a procedure whereby the President shall make submissions to the Congress. And hereby either House may disapprove of such submissions.

Therefore the Chair overrules the point of order.

## § 8. Separate Orders and Orders of the House

In addition to the standing rules of the House, the House may adopt resolutions that represent “free-standing” orders of the House. Such resolutions are functionally equivalent to amendments to the standing rules, but do not formally amend the standing rules of the House. They may address specific areas where the House rules may be silent or provide broad grants of discretionary authority. For example, the 95th Congress adopted two resolutions providing for short-term experimentation in closed-circuit broadcasting of House floor proceedings—an area not explicitly addressed by the standing rules at that time, but previously regulated by the Speaker exercising discretionary authority over control of the Chamber.<sup>(1)</sup>

Often, these free-standing orders are temporary measures that are later codified in the standing rules themselves, usually in a subsequent Congress. In the 96th Congress, for example, a free-standing order was adopted providing for a new process by which Members and officers of the House would respond to subpoenas—a process that would be formally incorporated into the standing rules in the following Congress.<sup>(2)</sup> In the 100th Congress, the

1. See *Precedents (Wickham)* Ch. 4 § 3.1. See also *Deschler's Precedents* Ch. 5 § 6.4.

2. See H. Res. 722, 126 CONG. REC. 25777–78, 25785, 25787–90, 96th Cong. 2d Sess. (Sept. 17, 1980), and H. Res. 5, 127 CONG. REC. 98–99, 97th Cong. 1st Sess. (Jan. 5, 1981).