

CONGRESSIONAL REVIEW ACT IMPROVEMENT ACT

JUNE 12, 2009.—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. 2247]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 2247) 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. 2247, the “Congressional Review Act Improvement Act,” amends the Congressional Review Act (CRA) to reduce administrative burdens and duplicative paperwork by repealing the require-

ment that agencies submit copies of all final rules and reports thereon directly to both the House and the Senate. The bill instead requires that the House and Senate receive a weekly list of all final rules from the Comptroller General of the Government Accountability Office (GAO) and to have such list printed in the Congressional Record with a statement of referral for each rule. 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 Act¹ currently requires an agency promulgating a rule² to submit a report containing: (1) a copy of the rule; (2) a concise general statement describing the rule, including whether it is a major rule³; and (3) the proposed effective date of the rule. This report must be submitted to both Houses of Congress and to the GAO.⁴ Each House must then send a copy of the report to the chairman and ranking minority member of each committee with jurisdiction over the law under which the rule was issued.⁵

For major rules, in addition to submitting a report concerning the new rule, the promulgating agency must also submit to GAO: (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.⁸ Such information must also be made available to each House of Congress.⁹

The CRA authorizes Congress to disapprove an agency rule to which it objects. Congress can do so by enacting a joint resolution of disapproval.¹⁰ Such a resolution must be introduced within the specified review period of at least 60 days.¹¹ 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 disapproved rule is deemed not to have had any effect at any time.¹² Additionally, the CRA prohibits an agency from reissuing a rule that is substantially the same as a disapproved rule.¹³ The CRA also prescribes special expedited procedures for Senate

¹Pub. L. No. 104-121, subtitle E, 110 Stat. 857-74 (1996) (codified as 5 U.S.C. §§801-08).

²As used in the CRA, 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. §551 (2007). See also 5 U.S.C. §804(3) (2007) (defining "rule" by reference to §551, with certain exceptions).

³The CRA defines "major rule" 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. 5 U.S.C. §804(2). Designation of a rule as a "major rule" triggers certain additional CRA requirements. See 5 U.S.C. §801(a)(2)(A) (2007) (requiring GAO to provide report on each major rule to committees of jurisdiction in each House of Congress by the end of 15 calendar days after submission or publication date of rule); 5 U.S.C. §801(a)(3) (2007) (prescribing later effective date for major rules).

⁴5 U.S.C. §801(a)(1)(A) (2007).

⁵5 U.S.C. §801(a)(1)(C) (2007).

⁶Pub. L. No. 96-353 (1980).

⁷Pub. L. No. 104-4 (1995).

⁸5 U.S.C. §801(a)(1)(B) (2007).

⁹Id.

¹⁰See 5 U.S.C. §802 (2007) (outlining congressional disapproval procedure).

¹¹5 U.S.C. §802(a) (2007).

¹²5 U.S.C. §801(f) (2007).

¹³5 U.S.C. §801(b)(2) (2007).

consideration of a joint resolution of disapproval, though it does not provide for similar procedures in the House of Representatives.¹⁴

As of March 31, 2008, 47 joint resolutions of disapproval had been introduced relating to 35 rules.¹⁵ None of the joint resolutions introduced in the House have passed. Three of the Senate-originated joint resolutions passed in the Senate.¹⁶ Of the latter, the House passed and the President signed only one.¹⁷ In short, over the 13 years of the CRA's existence, the CRA's disapproval mechanism has yielded only one congressional disapproval.¹⁸

NEED FOR LEGISLATION

While congressional disapproval of an agency rule using the CRA process has been exceedingly rare, the entities tasked with implementing the CRA have borne significant administrative burdens. As of March 31, 2008, the GAO submitted rules and reports to Congress on 731 major rules and had cataloged 46,809 non-major rules.¹⁹ 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.²⁰ In the 109th Congress, that number rose to 10,742.²¹ As the Parliamentarian indicated:

This flow of paper poses a significant increment of workload for a range of individuals. 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.²²

In addition, agencies must often resort to hand-delivering the required materials by courier to the House and Senate, in order to comply with the CRA and the standards regarding communications transmitted to Congress.²³ Materials are frequently returned to the promulgating agency for failure to comply with the CRA or these other congressional requirements, delaying implementation of the rule.²⁴

In the 110th Congress, H.R. 5593, a bill similar to H.R. 2247, was introduced by then-Subcommittee on Commercial and Admin-

¹⁴ 5 U.S.C. § 802(c) (2007).

¹⁵ Morton Rosenberg, *Congressional Review of Agency Rulemaking: An Update and Assessment of the Congressional Review Act After A Decade*, Congressional Research Service Report for Congress, RL 30116, at 5 (May 8, 2008).

¹⁶ *Id.*

¹⁷ Pub. L. No. 107-5, 115 Stat. 7.

¹⁸ Moreover, this disapproval was the result of a confluence of unusual factors, including “control of both Houses of Congress and the presidency by the same party, the longstanding opposition by these political actors, as well as by broad components of the industry to be regulated, to the [rule at issue], and the willingness and encouragement of a President seeking to undo a contentious, end-of-term rule from a previous Administration.” Morton Rosenberg, *Congressional Review of Agency Rulemaking: An Update and Assessment of the Congressional Review Act After A Decade*, Congressional Research Service Report for Congress, RL 30116, at 12 (May 8, 2008).

¹⁹ *Id.* at 5.

²⁰ Statement of John V. Sullivan, Parliamentarian, U.S. House of Representatives, *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).

²¹ *Id.*

²² *Id.* at 3.

²³ *Id.*

²⁴ *Id.*

istrative Law Chair Linda Sánchez, with Committee Chairman John Conyers, Jr., Committee Ranking Member Lamar Smith, and then-Subcommittee Ranking Member Chris Cannon as original co-sponsors. It passed the House June 9, 2008; the Senate, however, did not act on this bill before the 110th Congress adjourned. H.R. 2247 is identical to H.R. 5593 as passed by the House in the 110th Congress.

HEARINGS

The Committee held no hearings on H.R. 2247. However, the Committee's Subcommittee on Commercial and Administrative Law held an oversight hearing on the CRA on November 6, 2007, during the 110th Congress. Testimony was received from 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. At that hearing, Mr. Sullivan testified about the burdens of implementing the CRA imposed on the Office of the Parliamentarian. Mr. Sullivan had previously testified before the Subcommittee in the 109th Congress on the same topic.²⁵ Additionally, Mr. Sullivan's predecessor, Charles W. Johnson, testified before the Subcommittee in the 105th Congress on the same topic.²⁶

COMMITTEE CONSIDERATION

On May 13, 2009, and again on May 20, 2009, the Committee met in open session to consider the bill, H.R. 2247, and on May 20, 2009, ordered the bill 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. 2247.

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.

²⁵ 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).

²⁶ 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).

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. 2247, 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 26, 2009.

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. 2247, 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,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 2247—Congressional Review Act Improvement Act.

H.R. 2247 would reduce reporting requirements for agencies that submit information to the legislative branch under the Congressional Review Act (CRA). CBO estimates that implementing H.R. 2247 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 new rules 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. 2247 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 information.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by Theresa Gullo, Deputy 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. 2247 would relieve unnecessary administrative burdens and reduce duplicative paperwork by repealing the requirement that agencies submit all rules and reports directly to both the House and Senate.

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. 2247 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) of the bill repeals the requirement that agencies submit all new rules and related reports directly to both the House and Senate. It designates the GAO 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. Congress remains free to require, upon request, that an agency make available the additional materials concerning major rules.

Section 2(a)(2) amends subsection (e)(1) of the Congressional Review Act to require the GAO 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 the rule is a major rule. Section 2(a)(2) further 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 GAO 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 *on request*—

(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

* * * * *

