

106TH CONGRESS
2D SESSION

S. 2670

To amend chapter 8 of title 5, United States Code, to require major rules of agencies to be approved by Congress in order to take effect, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 6, 2000

Mr. THOMAS introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To amend chapter 8 of title 5, United States Code, to require major rules of agencies to be approved by Congress in order to take effect, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Congressional Regu-
5 latory Review Reform Act of 2000”.

6 **SEC. 2. CONGRESSIONAL REVIEW OF AGENCY RULE-**
7 **MAKING.**

8 Chapter 8 of title 5, United States Code, is amended
9 to read as follows:

1 **“CHAPTER 8—CONGRESSIONAL REVIEW**
 2 **OF AGENCY RULEMAKING**

“Sec.

“801. Definitions.

“802. Congressional approval of major rules.

“803. Congressional review.

“804. Approval procedure.

“805. Presidential interim approval.

“806. Prohibition on another rule in substantially same form.

“807. Judicial review.

3 **“§ 801. Definitions**

4 “In this chapter:

5 “(1) The term ‘agency’ has the meaning given
 6 that term under section 551(1).

7 “(2) The term ‘major rule’ —

8 “(A) means any rule that the Adminis-
 9 trator of the Office of Information and Regu-
 10 latory Affairs of the Office of Management and
 11 Budget, after consultation with the Comptroller
 12 General, finds has resulted in or is likely to re-
 13 sult in—

14 “(i) an annual effect on the economy
 15 of \$100,000,000 or more;

16 “(ii) a major increase in costs or
 17 prices for consumers, individual industries,
 18 Federal, State, or local government agen-
 19 cies, or geographic regions; or

20 “(iii) significant adverse effects on
 21 competition, employment, investment, pro-

1 ductivity, innovation, or on the ability of
2 United States-based enterprises to compete
3 with foreign-based enterprises in domestic
4 and export markets; and

5 “(B) does not include any rule promul-
6 gated under the Telecommunications Act of
7 1996 and the amendments made by that Act.

8 “(3) The term ‘rule’ has the meaning given that
9 term under section 551, except that such term does
10 not include—

11 “(A) any rule of particular applicability,
12 including a rule that approves or prescribes for
13 the future rates, wages, prices, services, or al-
14 lowances therefor, corporate or financial struc-
15 tures, reorganizations, mergers, or acquisitions
16 thereof, or accounting practices or disclosures
17 bearing on any of the foregoing;

18 “(B) any rule relating to agency manage-
19 ment or personnel; or

20 “(C) any rule of agency organization, pro-
21 cedure, or practice that does not substantially
22 affect the rights or obligations of non-agency
23 parties.

1 **“§ 802. Congressional approval of major rules**

2 “Subject to section 805, before a major rule can take
3 effect, such rule shall be—

4 “(1) submitted to Congress as required under
5 section 803; and

6 “(2) approved by a joint resolution described
7 under section 804.

8 **“§ 803. Congressional review**

9 “(a)(1) Any agency promulgating a major rule shall
10 submit to each House of Congress and to the Comptroller
11 General a report containing—

12 “(A) a copy of the major rule;

13 “(B) a concise general statement relating to the
14 major rule; and

15 “(C) the proposed effective date of the major
16 rule.

17 “(2) On the date of the submission of the report
18 under paragraph (1), the agency promulgating the major
19 rule shall submit to the Comptroller General and make
20 available to each House of Congress—

21 “(A) a complete copy of the cost-benefit anal-
22 ysis of the major rule, if any;

23 “(B) the agency’s actions relevant to sections
24 603, 604, 605, 607, and 609;

1 “(C) the agency’s actions relevant to sections
2 202, 203, 204, and 205 of the Unfunded Mandates
3 Reform Act of 1995; and

4 “(D) any other relevant information or require-
5 ments under any other Act or any relevant Execu-
6 tive order.

7 “(3) Upon receipt of a report submitted under para-
8 graph (1), each House shall provide copies of the report
9 to the chairman and ranking member of each standing
10 committee with jurisdiction under the rules of the Senate
11 or the House of Representatives to report a bill to amend
12 the provision of law under which the major rule is issued.

13 **“§ 804. Approval procedure**

14 “(a)(1) In this section, the term ‘joint resolution’
15 means only a joint resolution that—

16 “(A) is introduced on the date described under
17 paragraph (2), the matter after the resolving clause
18 of which is as follows: ‘The Congress approves the
19 rule relating to _____ submitted by the
20 _____, and such rule shall take effect.’;
21 and

22 “(B) applies to the rule in the form submitted
23 to Congress, without amendment of the rule by Con-
24 gress.

1 “(2) On the first day that both Houses of Congress
2 are in session following the date that a major rule is sub-
3 mitted to Congress under section 803(a)—

4 “(A) the Majority Leader of the Senate and the
5 Minority Leader of the Senate shall introduce a joint
6 resolution of approval as described under paragraph
7 (1) relating to that major rule; and

8 “(B) the Majority Leader of the House of Rep-
9 resentatives and the Minority Leader of the House
10 of Representatives shall introduce a joint resolution
11 of approval as described under paragraph (1) relat-
12 ing to that major rule.

13 “(b)(1) On the date that a joint resolution is intro-
14 duced under subsection (a), the joint resolution shall be
15 referred to 1 committee of jurisdiction. The committee
16 may not amend the joint resolution. If the joint resolution
17 is not reported by the committee not later than 20 cal-
18 endar days after referral to the committee, the joint reso-
19 lution shall be discharged from the committee and placed
20 on the calendar of the appropriate House of Congress.

21 “(2) Subject to subsection (c), 10 calendar days after
22 the joint resolution is placed on the calendar under para-
23 graph (1)—

24 “(A) the joint resolution shall be deemed passed
25 by each House of Congress; and

1 “(B)(i) if the joint resolution was introduced in
2 the House of Representatives, the Clerk of the
3 House of Representatives shall enroll the joint reso-
4 lution for presentation to the President; and

5 “(ii) if the joint resolution was introduced in
6 the Senate, the Secretary of the Senate shall take no
7 further action.

8 “(c)(1) If during the 30-calendar day period begin-
9 ning on the date of introduction of a joint resolution under
10 subsection (a), a petition is signed and filed by 20 percent
11 or more of the Members of either House of Congress ob-
12 jecting to the approval of a major rule, subsection (b)(2)
13 shall not apply to a joint resolution introduced in either
14 House of Congress relating to the major rule which is the
15 subject of the petition.

16 “(2) A petition under this subsection may be filed
17 with the Secretary of the Senate or the Clerk of the House
18 of Representatives, as appropriate, and both such officers
19 shall accept such a filing on any day on which the Senate
20 or the House of Representatives is not in session.

21 “(3) The Secretary of the Senate or the Clerk of the
22 House of Representatives shall submit a copy of any peti-
23 tion and a copy of the relevant joint resolution to the
24 Comptroller General on the date on which a petition is
25 filed.

1 “(d) Not later than 45 days after the date on which
2 a petition is filed under subsection (c), the Comptroller
3 General shall submit a report to the Secretary of the Sen-
4 ate and the Clerk of the House of Representatives on the
5 applicable major rule. The report shall include a regu-
6 latory analysis of the major rule and an assessment of the
7 compliance of the agency proposing the rule with section
8 803. Upon submission of the report, the report and the
9 joint resolution of approval shall be published in the Fed-
10 eral Register.

11 “(e)(1) On or after the date on which the Comptroller
12 General submits a report under subsection (d), it is at any
13 time in order (even though a previous motion to the same
14 effect has been disagreed to) for any Member of the re-
15 spective House to move to proceed to the consideration
16 of the joint resolution, and all points of order against the
17 joint resolution (and against consideration of the joint res-
18 olution) are waived. The motion is highly privileged in the
19 House of Representatives and is privileged in the Senate
20 and is not debatable. The motion is not subject to amend-
21 ment, or to a motion to postpone, or to a motion to pro-
22 ceed to the consideration of other business. A motion to
23 reconsider the vote by which the motion is agreed to or
24 disagreed to shall not be in order. If a motion to proceed
25 to the consideration of the resolution is agreed to, the joint

1 resolution shall remain the unfinished business of the re-
2 spective House until disposed of. An amendment to the
3 joint resolution shall not be in order.

4 “(2) Debate on the joint resolution, and on all debat-
5 able motions and appeals in connection therewith, shall be
6 limited to not more than 10 hours, which shall be divided
7 equally between those favoring and those opposing the
8 joint resolution. A motion further to limit debate is in
9 order and not debatable. An amendment to, or a motion
10 to postpone, or a motion to proceed to the consideration
11 of other business, or a motion to recommit the joint reso-
12 lution is not in order. A motion to reconsider the vote by
13 which the joint resolution is agreed to or disagreed to is
14 not in order.

15 “(3) Immediately following the conclusion of the de-
16 bate on a joint resolution, and a single quorum call at
17 the conclusion of the debate if requested in accordance
18 with the rules of the appropriate House, the vote on final
19 passage of the joint resolution shall occur.

20 “(4) Appeals from the decisions of the Chair relating
21 to the application of the rules of the Senate or the House
22 of Representatives, as the case may be, to the procedure
23 relating to a joint resolution shall be decided without de-
24 bate.

1 “(5) If, before the passage by one House of a joint
2 resolution of that House, that House receives from the
3 other House a resolution, then the following procedures
4 shall apply:

5 “(A) The joint resolution of the other House
6 shall not be referred to a committee.

7 “(B) With respect to a joint resolution of the
8 House receiving the joint resolution—

9 “(i) the procedure in that House shall be
10 the same as if no joint resolution had been re-
11 ceived from the other House; but

12 “(ii) the vote on final passage shall be on
13 the joint resolution of the other House.

14 “(f) This section is enacted by Congress—

15 “(1) as an exercise of the rulemaking power of
16 the Senate and House of Representatives, respec-
17 tively, and as such it is deemed a part of the rules
18 of each House, respectively, but applicable only with
19 respect to the procedure to be followed in that
20 House in the case of a joint resolution described in
21 subsection (a), and it supersedes other rules only to
22 the extent that it is inconsistent with such rules; and

23 “(2) with full recognition of the constitutional
24 right of either House to change the rules (so far as
25 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in
2 the case of any other rule of that House.

3 **“§ 805. Presidential interim approval**

4 “(a)(1) A major rule that would not take effect by
5 reason of sections 803 and 804 may take effect as pro-
6 vided under this section if the President makes a deter-
7 mination under paragraph (2) and submits a written no-
8 tice of such determination to the Congress.

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

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

14 “(B) necessary for the enforcement of criminal
15 laws;

16 “(C) necessary for national security; or

17 “(D) issued pursuant to any statute imple-
18 menting an international trade agreement.

19 “(b)(1) A major rule may be effective under this sec-
20 tion during the period beginning on the date of the sub-
21 mission of a notice relating to the rule under subsection
22 (a) and the date on which—

23 “(A) the President signs a joint resolution of
24 approval of the major rule; or

1 “(b) A major rule to which section 805 applies shall
2 not be subject to judicial review during the period de-
3 scribed under section 805(b).”.

4 **SEC. 3. PROGRAM FOR REVIEW OF AGENCY RULES.**

5 (a) DEFINITIONS.—In this section the terms “agen-
6 cy” and “rule” have the meanings given such terms under
7 section 551 of title 5, United States Code.

8 (b) PROGRAM FOR REVIEW OF AGENCY RULES.—

9 (1) AUTHORIZATION.—The President may es-
10 tablish by Executive order a program for the system-
11 atic review of rules.

12 (2) CONTENTS OF PROGRAM.—At a minimum,
13 a program established under this section shall—

14 (A) contain the procedural safeguards in
15 effect under Executive order 12,866;

16 (B) limit the total period of executive re-
17 view to not more than 90 calendar days;

18 (C) require periodic public disclosure of the
19 status of rules under review;

20 (D)(i) require maintaining a record of all
21 contacts between employees of an agency and
22 persons who are not Federal employees with re-
23 spect to a rule; and

24 (ii) require public disclosure of such con-
25 tacts; and

1 (E) require the public disclosure of each
2 draft of a rule submitted for review to a review-
3 ing authority, with identification of any changes
4 made at the suggestion of the reviewing author-
5 ity, at the time the proposed rule is published
6 in the Federal Register for public comment.

7 **SEC. 4. EFFECTIVE DATE.**

8 This Act and the amendment made by this Act shall
9 take effect 180 days after the date of enactment of this
10 Act.

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