



Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act

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October 10, 2001

Congressional Research Service

7-5700

www.crs.gov

RL31160

Summary

The Congressional Review Act of 1996 established expedited (or “fast track”) procedures by which Congress may disapprove a broad range of regulatory rules issued by federal agencies by enacting a joint resolution of disapproval. For initial floor consideration, the Act provides an expedited procedure only in the Senate. (The House would likely consider the measure pursuant to a special rule.) The Senate may use the procedure for 60 days of session after the agency transmits the rule to Congress. In both houses, however, to qualify for expedited consideration, a disapproval resolution must be submitted within 60 days after Congress receives the rule, exclusive of recess periods. Pending action on a disapproval resolution, the rule may go into effect, unless it is a “major rule” on which the President or issuing agency does not waive a delay period of 60 calendar days.

If a disapproval resolution is enacted, the rule may not take effect and the agency may issue no substantially similar rule without subsequent statutory authorization. If a rule is disapproved after going into effect, it is “treated as though [it] had never taken effect.” If either house rejects a disapproval resolution, the rule may take effect at once. If the President vetoes the resolution, the rule may not take effect for 30 days of session thereafter, unless the House or Senate votes to sustain the veto. If a session of Congress adjourns *sine die* less than 60 days of session after receiving a rule, the full 60-day periods for action begin anew on the 15th day of session after the next session convenes.

Except for submission of disapproval resolutions and final congressional action thereon, the expedited procedures under the Act apply only to Senate consideration. The House would consider a disapproval resolution under its general procedures, very likely as prescribed by a special rule reported from the Committee on Rules. In the Senate, once the resolution has been before committee for 20 calendar days, the panel is discharged if 30 Senators submit a petition for the purpose. Once the committee has reported or been discharged, a motion to proceed to consider the resolution would in practice be nondebatable, and the Act prohibits various other possible dilatory actions in relation to the motion and the resolution. Floor debate on the resolution is limited to 10 hours, and no amendment is in order.

The Act does not preclude amendment of a disapproval resolution in the House, and means may exist of overcoming the prohibition on amendment in the Senate. For these reasons, and because the initial texts could differ, the resolutions initially adopted by the two houses might not be identical. The Act enables Congress to avoid the need to resolve differences between the two versions by providing that, when either house adopts a disapproval resolution, the other shall first consider its own disapproval resolution and then vote on the resolution received from the first. As long as the substantive effect of both is similar, the difference in text should not affect the ultimate effect of the legislation. If the substantive effects differ, presumably the two measures could not be linked in this way by using the expedited procedures of the Act.