The Congressional Review Act and Possible Consolidation into a Single Measure of Resolutions Disapproving Regulations

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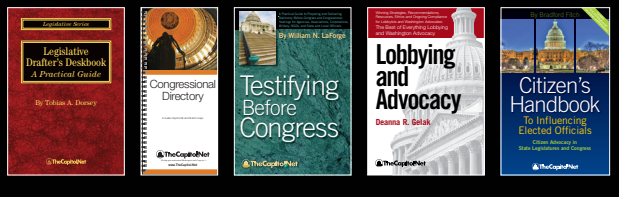

Summary

The Congressional Review Act (CRA) establishes expedited procedures for Congress to disapprove regulations issued by Federal agencies. Disapproval under these procedures requires enactment of a joint resolution that has a specified text and is submitted within 60 days (excluding recesses) after Congress receives the regulation. For these disapproval resolutions, the act provides expedited procedures for Senate consideration and to clear the measure for Presidential action. If the resolution becomes law, the rule not only becomes of no force and effect, but is treated as if it had never taken effect, and the issuing agency may issue no "substantially similar" rule without subsequent authorization by law.

If vetoed, a disapproval resolution can become law only if Congress overrides the veto. For regulations submitted 60 or fewer session days before a *sine die* adjournment, however, the CRA provides a further 60-day period for submitting disapproval regulations, starting on the 15th session day of the next session. Interest has arisen in using the CRA in this way in the 111th Congress to disapprove regulations issued late in the Bush Administration. Using the CRA in this way for numerous regulations, however, could consume large amounts of floor time. The question has accordingly been raised whether the CRA permits multiple disapproval resolutions to be "bundled," or consolidated into a single measure.

Congress could always overturn regulations through a consolidated measure under its general legislative powers. Even if such a consolidated measure was submitted during the required time period, however, it would not have the text required by the CRA, which permits the statement only of a single disapproval. If enacted, as a result, it would not have the special effects for which the act provides. A consolidated measure, nevertheless, could include provisions specifying that the component disapproval provisions have the same effects as if they were separate disapproval resolutions enacted pursuant to the CRA.

Any consolidated measure also would not be eligible for the expedited procedures provided in the CRA. In the Senate, as a result, its approval might be possible only by constructing it to include provisions that could attract sufficient support to invoke cloture. If the Senate could dispose of some disapprovals in this way, moreover, it might be able to deal with others through individual disapproval resolutions under the expedited procedure, especially by persistent use of its provisions for limiting debate by majority vote. In the House, a special rule could limit debate and amendment of a consolidated measure. Alternatively, a single special rule might provide for limited and consolidated debate on a group of individual disapproval resolutions. House rules protecting the motion to recommit would require final action on each resolution to be separate.

If each chamber agreed to some disapprovals in a consolidated measure and others in separate resolutions under the CRA, the two chambers would have to resolve differences between the consolidated measures under their general rules. Either chamber might also provide for routine passage, when received, of any separate disapproval resolution of the other that corresponded to a provision in its own consolidated measure. The House might provide for this treatment of Senate disapproval resolutions, through a provision in its special rule for considering its consolidated measure, more easily than could the Senate for those of the House. No update of this report is planned.

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Disapproval of Regulations Under the Congressional Review Act

The Congressional Review Act ("CRA" or the act)[1] establishes a statutory procedure by which Congress can disapprove a regulation issued as a final rule by a federal agency. Disapproval under this procedure requires the enactment into law of a joint resolution, the text of which is specified by section 802(a) of the act (a "disapproval resolution"). In order to fall under the provisions of the act, this disapproval resolution must have the specified text, and also must be submitted in each chamber within a specified time period after the rule itself is transmitted to Congress.[2] For a joint resolution that meets these requirements, the act makes available, for a specified period after the rule is transmitted and published in the *Federal Register*, an expedited procedure for its consideration in the Senate. This statutory procedure expedites action by making consideration of the disapproval resolution privileged, limiting debate, and prohibiting amendment. (Except in relation to final action to clear the measure for presentation to the President, the CRA presumes that the House will act on a disapproval resolution under its generally applicable rules.)[3]

If a disapproval resolution under the CRA is enacted into law, the disapproved rule becomes of no force and effect; even if it has already taken effect, the CRA specifies that it is to be treated as though it had never taken effect. In addition, if a rule is disapproved under the CRA, the issuing agency may not reissue the same or a substantially similar rule without subsequent statutory authorization from Congress.[4]

Under most circumstances, congressional disapproval under the CRA is difficult because the President is likely to veto any disapproval of a rule issued by his own administration, and in that case the disapproval can become law only if both houses can override the veto. This obstacle, however, may be mitigated in cases in which the disapproval resolution is presented, not to the President under whom the rule was issued, but to his successor, perhaps especially one of a different political party.[5] The CRA potentially facilitates action in such situations by explicitly establishing procedures for a new Congress to disapprove rules issued near the end of the preceding Congress.

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[1] Subtitle E ("Congressional Review") of the Small Business Regulatory Enforcement Fairness Act of 1996, Title II of the Contract with America Advancement Act of 1996, P.L. 104-121 (110 Stat. 847 at 868-874). Citations in this report are to the act as codified at 5 U.S.C. 801-808.

[2] The CRA establishes a broadly encompassing definition of what counts as a "rule" for its purposes and requires that all covered rules be transmitted to Congress when issued. This requirement and its implications are considered in CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg.

[3] Detail about these statutory timelines and procedures appears in archived CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth.

[4] For discussion of the implications of these provisions, see CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg.

[5] These are conditions that prevailed in the only successful use of the CRA disapproval procedure up through the end of the 110th Congress. In 2001, the incoming 107th Congress passed, and incoming President George W. Bush signed, S.J.Res. 6 (P.L. 107-5), disapproving a rule on workplace ergonomics issued by the preceding Clinton Administration. See CRS Report RL30116, *Congressional Review of Agency Rulemaking: An Update and Assessment of The Congressional Review Act after a Decade*, by Morton Rosenberg.

This report briefly describes the CRA provisions for disapproval of rules issued in a preceding Congress and considers their implications for congressional action at the beginning of a new presidential administration.[6] In particular, however, it considers to what extent, and by what means, it may be feasible for Congress to act, under these circumstances, to disapprove potentially large numbers of rules. The CRA makes such action more difficult by requiring that each resolution under the act may provide for the disapproval only of a single rule. This report discusses some procedural means by which this difficulty might be addressed.

Disapproval of Regulations Received by the Preceding Congress

To be eligible for action under the CRA, a disapproval resolution must be submitted within 60 days after Congress receives the rule in question, not counting days on which either house is in a recess for more than three days within a session (sometimes called the "initiation period").[7] The Senate may use the expedited procedure provided by the CRA to consider a disapproval resolution at any time during the 60 days on which the Senate actually meets in session following the receipt of the rule (or following its publication in the *Federal Register*, if so published after the rule is received).[8] Except for this "action period" in the Senate, the CRA places no time limit on congressional action pursuant to the act. If a resolution is submitted during the required period, it could be enacted at any time within the same Congress, and would still have the effects specified by the act. If Senate consideration occurs when the expedited procedure is no longer available, however, the disapproval could be filibustered or amended in that chamber. If amended, it would no longer have the text required by the act, and so would not automatically have the additional effects specified by the act.

If a rule is received near the end of a Congress, Congress may adjourn *sine die* before the periods for initiation of the disapproval and for expedited Senate action are concluded. Under these conditions, opponents of the rule may find it impracticable to submit a disapproval resolution and secure action on it under the CRA during the abbreviated time remaining. The following Congress also might find use of the CRA to disapprove the rule unfeasible. Any previously submitted disapproval resolution (like every other legislative measure) would have died with the expiration of the previous Congress. The language of the CRA could be read as permitting the periods for submitting a disapproval resolution and for expedited Senate action thereon to extend into a new Congress,[9] but even if this interpretation is accepted, the time remaining for action in

[6] For a more detailed discussion of these procedures and their applicability, see CRS Report RL34633, *Congressional Review Act: Disapproval of Rules in a Subsequent Session of Congress*, by Curtis W. Copeland and Richard S. Beth.

[7] Under this standard, the clock stops only when one House or both is out of session pursuant to a concurrent resolution providing for a recess. Days on which neither house is in recess, including weekends and periods of *pro forma* session, count toward the 60 days. A *pro forma* session is one held simply to satisfy the requirement that neither house recess for more than three days except pursuant to a concurrent resolution providing for a recess or adjournment. Detail on this standard, defined by the CRA as "days of continuous session," appears in CRS Report RL31160, *Disapproval of Regulations by Congress: Procedure Under the Congressional Review Act*, by Richard S. Beth. The application of this standard in relation to the 110th and 111th Congress is discussed in CRS Report RL34633, *Congressional Review Act: Disapproval of Rules in a Subsequent Session of Congress*, by Curtis W. Copeland and Richard S. Beth.

[8] For this purpose, any day on which the Senate meets, including meetings in *pro forma* session, counts toward the 60 days on which the Senate does not meet. Excluded from the count are not only recesses of the Senate pursuant to concurrent resolution, but also weekends when the Senate does not meet, as well as days between *pro forma* sessions.

[9] Neither of the pertinent provisions of the act explicitly specifies that all days of the periods in question must occur within the same session of Congress. The period for submitting a resolution pauses only for "days either House of Congress is adjourned for more than 3 days during a session of Congress," which could be read as implying that it does not pause, but continues, during adjournments *between* sessions. 5 U.S.C. 802(a). The authorization for expedited (continued...)

the new Congress might also be too short to make feasible the use of the act to disapprove the rule.

The CRA provides for these situations by establishing that, for any rule transmitted near the end of a session, statutory periods for submitting disapproval resolutions and for Senate action thereon begin anew in the following session.[10] This provision applies to any rule transmitted on or after either the 60th day of session in the Senate, or the 60th legislative day in the House, before the *sine die* adjournment of a session. For any rule transmitted during this "carryover period" in either chamber, the act makes available, in the following session, a new period of 60 days (not counting recesses) for submitting disapproval resolutions in each chamber, and a new period of 60 days of session for Senate action on the resolution. These new periods begin, for each chamber, on the 15th day of session in that chamber after the new session convenes.[11]

Disapproval of Multiple Regulations in a Party Transition

At the start of new Presidential and congressional terms, especially during transitions in party control when the incoming Congress and President are of a party different from that of the outgoing President, the likelihood may be especially great for congressional interest in disapproving rules that were issued during the "carryover period" in the final session of the previous Congress. Once the 110th Congress reached its final *sine die* adjournment, it became possible to ascertain that rules transmitted after May 15, 2008 (the 60th legislative day before the *sine die* adjournment of the House), will be subject to disapproval under the CRA in the early months of the 111th Congress. Many rules published by the Bush Administration after that date have been spoken of as potential candidates for such action.[12]

The possibility of congressional action to disapprove a potentially large number of these rules raises the prospect that consideration of the respective disapproval resolutions could occupy a

(...continued)

Senate action applies until "the expiration of the 60 session days commencing with the applicable submission or publication date" of the rule, without specifying the session of Congress during which those days of session must occur. 5 U.S.C. 802(e)(1).

[10] These considerations also apply, with appropriate modifications, to the disapproval of rules received by Congress near the close of a session of Congress other than the last, and the "carryover provisions" of the CRA apply to disapproval action in a subsequent session of the same Congress. This report, however, focuses on the operation and implications of the carryover provisions only in circumstances when the constitutional term of one Congress expires and that of another commences.

[11] Like the period for Senate action already described, only those days on which the respective chamber actually meets, including *pro forma* sessions, count toward the completion of the 60-day "carryover period" in the preceding session and of the 15-day period in the new session. Discussion of the application of this "carryover period" appears in CRS Report RL34633, *Congressional Review Act: Disapproval of Rules in a Subsequent Session of Congress*, by Curtis W. Copeland and Richard S. Beth.

The constitutional term of a new Congress begins on January 3 of each odd-numbered year (although its first session may convene on a later date, pursuant to a law enacted in the previous Congress), and the constitutional term of a President begins on January 20 of each quadrennium. As a result, the delay of 15 days of session before action under the CRA can begin in a new Congress makes it almost inevitable that any such action will occur, or at least will conclude, in the administration of the new President. It is not clear whether this consequence of the procedural scheme is intentional.

[12] For the ascertainment of the date and for examples of rules subject to subsequent disapproval, see CRS Report RL34633, *Congressional Review Act: Disapproval of Rules in a Subsequent Session of Congress*, by Curtis W. Copeland and Richard S. Beth.

large portion of the early agenda of Congress. The expedited procedure established for the Senate by the CRA permits the Senate to take up a disapproval resolution by a non-debatable motion, limits debate on the disapproval resolution itself to 10 hours, and allows a simple majority to reduce this time by a non-debatable motion. Even if this motion is persistently applied, nevertheless, significant time in the consideration of a series of disapproval resolutions might be consumed, not only in debate, but also by roll call votes (on such questions as proceeding to consider the measure and reducing the time for debate, as well as on adoption of the resolution). In the House, similarly, although the time for consideration of any measure always either is limited, or can be limited by majority vote (for example, by adoption of a special rule), significant time might also be consumed not only in debate, but also in roll call votes (such as on ordering the previous question on each special rule and adoption of each special rule itself, as well as on adoption of each disapproval resolution). Although these conditions would not normally present a severe obstacle to consideration of any single disapproval resolution, they might collectively render impracticable the consideration of any significant number of them.

Measures to Disapprove Multiple Regulations

One suggested means of overcoming these difficulties has been to consolidate, or "bundle," a group of disapprovals into a single joint resolution (or bill) that could be considered and disposed of by each house, as a unit, in a single proceeding. Consolidated consideration and voting on a single measure could readily enable either chamber to address an entire list of rules in substantially less time than might be consumed by a series of separate resolutions disapproving the same rules.

A related approach might be to include provisions disapproving regulations in a measure with the principal purpose of addressing other issues, such as a bill reauthorizing activities of the agency issuing the regulations. This approach might be used with particular facility in the Senate, where no general rule requires amendments to address the same subject as the underlying legislation. For example, a provision disapproving a regulation might be inserted in a bill carrying appropriations for the implementing agency, if the chamber in which the measure was being considered was willing to waive its rule against including provisions changing permanent law in an appropriations bill ("legislation in an appropriations bill").[13] Finally, the implementation of a regulation could be forestalled by including in a bill carrying appropriations for the implementing agency a prohibition against the expenditure of any funds in the bill for the purpose, known as a limitation, as long as the provision did not prescribe new duties or authorities for the agency. In general, however, a limitation is treated as a legislative provision unless its effect is limited to the funds in the bill. Because this type of action would not disapprove or repeal the regulation, preventing its implementation by this means would require a similar limitation to be included again in each subsequent bill appropriating funds for the agency.

Enactment of a measure disapproving a regulation in any of these forms could undoubtedly prevent the regulation from taking effect (or remaining in effect), inasmuch as Congress, in general, always retains the ability to override regulations by action under its general legislative powers. The text prescribed by section 802(a) of the act for a disapproval resolution includes a directive that "such rule shall have no force or effect." If each provision disapproving a regulation

[13] House Rule XXI clauses 2(b) and 2(c); Senate Rule XVI paragraphs 2 and 4.

that was included in a measure followed this prescribed text, the quoted phrase would no doubt suffice to vitiate the effectiveness of the respective rule.

Section 802(a) of the CRA, however, specifies that, for purposes of its congressional disapproval procedure:

> the term 'joint resolution' means only a joint resolution introduced in the period beginning on the date when [Congress receives the rule, as described earlier] 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).

This provision sets three conditions that a measure must meet to be covered by the act: it must take the form of a joint resolution, it must be submitted within the required time period, and it must have the specified text. Any broader measure that included provisions disapproving regulations, including a consolidated measure consisting solely of such provisions, would not meet the third part of this requirement even if it was a joint resolution and was submitted during the required period. Even if each section of the measure conformed to the text prescribed by section 802(a), the text of the measure as a whole would fail to match that required for a disapproval resolution. Accordingly, the measure would presumably be held not to qualify as a "joint resolution" described by section 802(a).

On these grounds, a consolidated measure consisting of the text of several disapproval resolutions (or any broader measure including such disapproval provisions) would presumably be ineligible for consideration in the Senate under the expedited procedure established by the CRA for a covered disapproval resolution. Enactment of the measure, in addition, presumably would not bring about the statutory consequences the CRA makes automatic for a covered disapproval resolution. If the disapproval provisions in the measure included only the text prescribed by the act, the explicit language of those provisions would presumably suffice to take out of effect the regulations identified therein. Without the inclusion of additional specific language, however, enactment of these provisions presumably would not take the regulations out of effect retroactively, nor would it disable the issuing agency from re-submitting a substantially similar rule, as the CRA prescribes for disapproval resolutions enacted pursuant to its provisions.

Possible Form of and Proceedings on Consolidated Measures

Framing and Effect

Although it appears that a joint resolution "bundling" several disapproval provisions into a single measure could not have standing as a disapproval resolution under the CRA, it may be possible to frame such a measure in a form that would allow it to accomplish effects similar to those intended by the CRA with respect to multiple rules.

Inasmuch as the consolidated measure would presumably not fall under the CRA in the first place, the drafting of the individual sections would not have to conform to the requirements of section 802(a). Instead, each section could include language specifying that the rule being

disapproved not only cease to have force and effect, but also (where appropriate) be treated as if it had never taken effect. Language could also be included directing that the respective issuing agency be precluded from issuing a substantially similar regulation in the absence of subsequent statutory authority.

Alternatively, each section disapproving a rule could be couched in terms conforming to section 802(b), and the measure could include additional provisions specifying that each section disapproving a rule was to have force and effect as if enacted as a separate disapproval resolution under the CRA. A provision of this sort would presumably suffice to permit the measure to achieve the desired effects even if it were introduced outside the period prescribed by section 802(b).

In addition, given that a consolidated measure would in any case not be subject to consideration under the CRA, its use might also give Congress more latitude in framing its individual provisions. For example, the text required by the CRA permits disapproval under the act only of a single regulation in its entirety. Acting outside the requirements of the CRA, Congress could provide for the disapproval only of the specific parts of a proposed regulation to which it objected, or could include language replacing or otherwise modifying certain provisions of the regulation. Further, inasmuch as consideration of a consolidated joint resolution of disapproval would not be covered by the CRA to begin with, either chamber could consider and adopt amendments to the measure without incurring any additional consequences for violating CRA requirements. As long as the measure still contained provisions specifying that the effects of the disapproval provisions were to include retroactive vitiation and prohibition on proposing a similar rule, its lack of the form required by the CRA would not prevent its enactment from having the same effects as provided by the CRA.

Consideration

A consolidated measure that lacked the form prescribed by the CRA also would not be eligible for consideration under the terms provided by the CRA, including the statutory expedited procedures for Senate consideration and the automatic procedures to facilitate clearance for Presidential action. In contrast to the considerations described in the preceding section, this difficulty could not be overcome by including appropriate provisions in the consolidated measure (unless, of course, the measure were to be converted into the form required by the statute in the first place). Otherwise, the measure could be considered as provided by the statute only if the chambers separately took action to provide that consideration occur under procedures corresponding to those of the statute. The Senate might be able to achieve this result only by unanimous consent; the House might do so by adopting a special rule.

Consideration in the Senate

In the Senate, a consolidated disapproval measure would presumably suffer from ineligibility for consideration under the statutory expedited procedure, by reason of its failure to satisfy the requirements of section 802(a). Presumably, as a result, the Senate would have to choose between considering either (1) a consolidated measure under its regular procedures or (2) a series of individual disapproval resolutions, each under the expedited procedures of the CRA (or, perhaps, both). Although the Senate could determine to consider a specific consolidated measure under limitations on debate and amendment comparable to those of the CRA, it could do so only by unanimous consent. To the extent that components of the measure might be highly controversial,

this consent would likely prove unobtainable. On the other hand, inasmuch as a consolidated measure would, in any case, be ineligible for the expedited procedure of the act, the 60-day period during which the act makes that procedure available would be no constraint on the timing of Senate action thereon.

If a consolidated measure were considered under the general rules of the Senate, it would be subject to amendment, including amendments that were non-germane or otherwise inconsistent with the objectives of the CRA. In addition, if the consolidated measure were considered under the general rules, opponents might attempt to prevent action by extended debate on the measure or on a motion to proceed to its consideration, or by other parliamentary means. In that case the Senate might be able to reach a vote on passage only if cloture could be invoked. Under these conditions, action on a consolidated measure might become feasible if its components could be compiled in such a way as to attract sufficient support to permit cloture to be invoked on the package. Composing such a package might require omitting disapproval proposals for certain rules on which Senators might place high importance. Supporters of the package might also have to protect it by securing the rejection of any amendments that would make cloture harder to obtain. Assuming sufficient support to invoke cloture, nevertheless, action on the consolidated measure might permit the Senate to dispose, in a relatively limited time, of a significant number of disapproval proposals.

It might then become practicable for the Senate also to disapprove at least a limited number of additional rules by means of separate disapproval resolutions. These resolutions could be stated and submitted in a way that met the requirements of section 802(a), so that each would be eligible for consideration under the statutory expedited procedure, including the non-debatable motion to proceed, the prohibition on amendment, the limit on debate, and the possibility of reducing that time limit by majority vote on a non-debatable motion. Persistent use of this latter motion, in particular, might enable consideration of a significant number of individual resolutions. Careful consideration would no doubt still be required about how many resolutions could feasibly be considered in this way, and which ones might be best worth taking up.

Consideration in the House

In the House, where the CRA prescribes no expedited procedure, the general rules of the chamber might be used in such a way as to facilitate action to disapprove a large number of rules. Two circumstances might make such action easier here than in the Senate. First, the general rules of the House always entail limits on debate and amendment or permit their imposition by a voting majority. Second, inasmuch as the CRA provides no expedited procedure for the House anyway, the House would lose no procedural advantage by considering a consolidated measure that failed to comport with the requirements of section 802(a).

One approach might be for the House to consider a consolidated measure that comprised sections each of which disapproved a rule in the terms required by section 802(a)), and that also contained language providing that each disapproval section would have the same effects as if separately enacted under the CRA. Even if the disapproval provisions did not conform to the requirements of section 802(a), it still might be possible to provide that each section had the effect of a CRA disapproval resolution. In its consideration of such a vehicle, the House might preserve the intent of the statutory mechanism by adopting a special rule that prohibited amendment to the text of any section, but permitted amendments that would only strike a section, or that would only add a section reflecting the text required for a disapproval resolution. This way of proceeding would

preserve the ability of the House to make individual decisions on which regulations to disapprove.

An alternative approach would be for the House to consider a single special rule providing for consideration of a series of separate disapproval resolutions with a strict time limit and a prohibition against amendment for each. The special rule might even provide for a single consolidated period of debate on all the covered disapproval resolutions, although a separate vote on adoption of each resolution would presumably be required, so as to preserve the opportunity for a motion to recommit required by House rules.[14] In this way, the House would still retain the opportunity to reject any individual disapproval resolution. It might still be possible, as well, to provide that additional resolutions meeting the requirements of section 802(a) could be considered if offered from the floor during consideration of the series of resolutions.

Coordinating Bicameral Action

For individual disapproval resolutions under the CRA, section 802(f) of the CRA provides that if one chamber considers a disapproval resolution when it has already received a companion from the other, then the final vote in the receiving chamber occurs on the companion measure. For this reason, in any case in which both houses, pursuant to the CRA, pass individual resolutions disapproving the same rule, no problem need arise at the stage of bicameral agreement.

If either chamber initially acts on a consolidated disapproval resolution, however, difficulties might arise in the other chamber. Even if the other chamber also acts initially on an identical consolidated measure, the statutory mechanism for automatic clearance of a single measure for Presidential action would not be available. In both chambers, however, it is common in such cases to follow passage of its own measure with agreement, often by unanimous consent or other routine means, to the identical measure already received from the other.

If the consolidated measures initially adopted in two chambers differ in content, on the other hand, the chamber acting second will normally pass the received measure only after amending it with the text of its own measure. Although this action often also occurs routinely, the subsequent clearance of a final measure for presentation to the President in these cases requires action to resolve differences between the two versions, either by conference or through an exchange of amendments. This action would have to take place under the general rules of both houses, and could result in delay or deadlock.

A third possibility is that the chamber acting second might take up, from the outset, the consolidated measure received from the other. In this case, however, insufficient support may exist in the second chamber to adopt the package in the same form as passed the first. The receiving chamber may prove able to adopt the measure received only with amendments, in which case action to resolve differences between the two versions would become necessary.

These difficulties might be most notable for the Senate in dealing with a consolidated measure received from the House, for any successful disposition of the House measure might require marshalling the support of a supermajority to invoke cloture. For this reason, if action through a consolidated measure is contemplated, House consideration of a measure originating in the

[14] Clause 6(c)(2) of House Rule XIII.

Senate might prove more practicable. The House might more readily be able at least to pass a version of the Senate measure that could become the basis for a resolution of differences.

Additional complications could arise if certain regulations are disapproved by one chamber in a consolidated measure and by the other in separate resolutions under the CRA. Such situations might most readily be resolved through action by the chamber that adopted the consolidated measure. This chamber might be able to provide that, upon passage of its own measure, if any disapproval resolution already received from the other corresponds to a provision of the consolidated measure, it be deemed to have passed the received resolution, or that it be in order immediately to consider and pass that resolution without debate. The same chamber might also provide that any disapproval resolution subsequently received, and corresponding to a provision of the consolidated measure, be deemed passed by the receiving chamber when received.

If both chambers entered such an order, it could ensure the completion of congressional action on any disapproval resolution adopted by one chamber for a rule disapproved by the other in a consolidated measure. It might then be possible to resolve the status of any disapprovals included in both consolidated measures through ordinary processes of resolving differences between the two measures.

In the House, it might be possible to provide for these proceedings through the terms of a special rule for considering the consolidated measure, but in the Senate unanimous consent would presumably be required. In addition, if the House transmitted numerous separate disapproval resolutions to the Senate, the Senate might have more difficulty than the House in limiting the time required for action sufficiently to enable it to act on all the measures received. For these reasons, action by the House on individual disapproval resolutions of the Senate might be found easier than action by the Senate on disapproval resolutions of the House. It might accordingly become important for advocates of disapprovals to consider to what extent initial action by the Senate on individual disapproval resolutions under the expedited procedure would carry the greatest promise of success.

In principle, a chamber that initially acted to disapprove rules in a consolidated measure might also facilitate action in the other chamber by directing that each component of the consolidated measure be engrossed as a separate joint resolution of disapproval before being transmitted to the other. If each of these separately engrossed joint resolutions had the text required by section 802(a) and originated during the period required by that section, it might be possible for it to be regarded as satisfying the requirements for a disapproval resolution under the CRA, so that it could be eligible for the expedited procedure in the Senate, automatic clearance for presentation to the President, and the additional effects of enactment prescribed by the statute.

In either chamber, however, it appears that separate engrossment of provisions in this way might be feasible only by unanimous consent. In the House, a special rule providing for separate engrossment would apparently be out of order as precluding a proper motion to recommit with respect to each of the separately engrossed measures. The same objection would evidently apply against another form of special rule that might have been taken as a means to an equivalent result, a “self-executing” rule providing that its own adoption would also adopt an entire group of separate disapproval resolutions.

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