

AMENDMENT NO. _____ Calendar No. _____

Purpose: To require congressional review of agency rule-making in cases of negative effect on access to affordable food.

IN THE SENATE OF THE UNITED STATES—112th Cong., 2d Sess.

(no.) _____

To reauthorize agricultural programs through 2017, and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by _____

Viz:

1 At the end of title XII, add the following:

2 **Subtitle D—Congressional Review**
3 **of Agency Rulemaking in Cases**
4 **of Negative Effect on Access to**
5 **Affordable Food**

6 **SEC. 12301. CONGRESSIONAL REVIEW OF AGENCY RULE-**
7 **MAKING IN CASES OF NEGATIVE EFFECT ON**
8 **ACCESS TO AFFORDABLE FOOD.**

9 Effective beginning on the date of enactment of this
10 Act, if the Secretary determines that a rule promulgated
11 by any Federal agency could have a negative effect on ac-

1 cess by any individual to affordable food, the procedures
2 described in this subtitle shall take effect.

3 **SEC. 12302. CONGRESSIONAL REVIEW.**

4 (a)(1)(A) Before a rule may take effect, the Federal
5 agency promulgating such rule shall submit to each House
6 of the Congress and to the Comptroller General a report
7 containing—

8 (i) a copy of the rule;

9 (ii) a concise general statement relating to the
10 rule;

11 (iii) a classification of the rule as a major or
12 nonmajor rule, including an explanation of the clas-
13 sification specifically addressing each criteria for a
14 major rule contained within subparagraphs (A)
15 through (C) of section 12305(2);

16 (iv) a list of any other related regulatory ac-
17 tions intended to implement the same statutory pro-
18 vision or regulatory objective as well as the indi-
19 vidual and aggregate economic effects of those ac-
20 tions; and

21 (v) the proposed effective date of the rule.

22 (B) On the date of the submission of the report under
23 subparagraph (A), the Federal agency promulgating the
24 rule shall submit to the Comptroller General and make
25 available to each House of Congress—

1 (i) a complete copy of the cost-benefit analysis
2 of the rule, if any, including an analysis of any jobs
3 added or lost, differentiating between public and pri-
4 vate sector jobs;

5 (ii) the agency's actions pursuant to sections
6 603, 604, 605, 607, and 609 of title 5, United
7 States Code;

8 (iii) the agency's actions pursuant to sections
9 202, 203, 204, and 205 of the Unfunded Mandates
10 Reform Act of 1995; and

11 (iv) any other relevant information or require-
12 ments under any other Act and any relevant Execu-
13 tive orders.

14 (C) Upon receipt of a report submitted under sub-
15 paragraph (A), each House shall provide copies of the re-
16 port to the chairman and ranking member of each stand-
17 ing committee with jurisdiction under the rules of the
18 House of Representatives or the Senate to report a bill
19 to amend the provision of law under which the rule is
20 issued.

21 (2)(A) The Comptroller General shall provide a re-
22 port on each major rule to the committees of jurisdiction
23 by the end of 15 calendar days after the submission or
24 publication date as provided in section 12303(b)(2). The
25 report of the Comptroller General shall include an assess-

1 ment of the agency's compliance with procedural steps re-
2 quired by paragraph (1)(B).

3 (B) Federal agencies shall cooperate with the Comp-
4 troller General by providing information relevant to the
5 Comptroller General's report under subparagraph (A).

6 (3) A major rule relating to a report submitted under
7 paragraph (1) shall take effect upon enactment of a joint
8 resolution of approval described in section 12303 or as
9 provided for in the rule following enactment of a joint res-
10 olution of approval described in section 12303, whichever
11 is later.

12 (4) A nonmajor rule shall take effect as provided by
13 section 12304 after submission to Congress under para-
14 graph (1).

15 (5) If a joint resolution of approval relating to a
16 major rule is not enacted within the period provided in
17 subsection (b)(2), then a joint resolution of approval relat-
18 ing to the same rule may not be considered under this
19 subtitle in the same Congress by either the House of Rep-
20 resentatives or the Senate.

21 (b)(1) A major rule shall not take effect unless the
22 Congress enacts a joint resolution of approval described
23 under section 12303.

24 (2) If a joint resolution described in subsection (a)
25 is not enacted into law by the end of 70 session days or

1 legislative days, as applicable, beginning on the date on
2 which the report referred to in subsection (a)(1)(A) is re-
3 ceived by Congress (excluding days either House of Con-
4 gress is adjourned for more than 3 days during a session
5 of Congress), then the rule described in that resolution
6 shall be deemed not to be approved and such rule shall
7 not take effect.

8 (c)(1) Notwithstanding any other provision of this
9 section (except subject to paragraph (3)), a major rule
10 may take effect for one 90-calendar-day period if the
11 President makes a determination under paragraph (2) and
12 submits written notice of such determination to the Con-
13 gress.

14 (2) Paragraph (1) applies to a determination made
15 by the President by Executive order that the major rule
16 should take effect because such rule is—

17 (A) necessary because of an imminent threat to
18 health or safety or other emergency;

19 (B) necessary for the enforcement of criminal
20 laws;

21 (C) necessary for national security; or

22 (D) issued pursuant to any statute imple-
23 menting an international trade agreement.

1 (3) An exercise by the President of the authority
2 under this subsection shall have no effect on the proce-
3 dures under section 12303.

4 (d)(1) In addition to the opportunity for review other-
5 wise provided under this subtitle, in the case of any rule
6 for which a report was submitted in accordance with sub-
7 section (a)(1)(A) during the period beginning on the date
8 occurring—

9 (A) in the case of the Senate, 60 session days,
10 or

11 (B) in the case of the House of Representatives,
12 60 legislative days,

13 before the date the Congress is scheduled to adjourn a
14 session of Congress through the date on which the same
15 or succeeding Congress first convenes its next session, sec-
16 tions 12303 and 12304 shall apply to such rule in the
17 succeeding session of Congress.

18 (2)(A) In applying sections 12303 and 12304 for
19 purposes of such additional review, a rule described under
20 paragraph (1) shall be treated as though—

21 (i) such rule were published in the Federal Reg-
22 ister on—

23 (I) in the case of the Senate, the 15th ses-
24 sion day, or

1 (II) in the case of the House of Represent-
2 atives, the 15th legislative day,
3 after the succeeding session of Congress first con-
4 venes; and

5 (ii) a report on such rule were submitted to
6 Congress under subsection (a)(1) on such date.

7 (B) Nothing in this paragraph shall be construed to
8 affect the requirement under subsection (a)(1) that a re-
9 port shall be submitted to Congress before a rule can take
10 effect.

11 (3) A rule described under paragraph (1) shall take
12 effect as otherwise provided by law (including other sub-
13 sections of this section).

14 **SEC. 12303. CONGRESSIONAL APPROVAL PROCEDURE FOR**
15 **MAJOR RULES.**

16 (a)(1) For purposes of this section, the term “joint
17 resolution” means only a joint resolution addressing a re-
18 port classifying a rule as major pursuant to section
19 12302(a)(1)(A)(iii) that—

20 (A) bears no preamble;

21 (B) bears the following title (with blanks filled
22 as appropriate): “Approving the rule submitted by
23 _____ relating to _____.”;

24 (C) includes after its resolving clause only the
25 following (with blanks filled as appropriate): “That

1 Congress approves the rule submitted by _____ re-
2 lating to _____.”; and

3 (D) is introduced pursuant to paragraph (2).

4 (2) After a House of Congress receives a report
5 classifying a rule as major pursuant to section
6 12302(a)(1)(A)(iii), the majority leader of that House (or
7 his or her respective designee) shall introduce (by request,
8 if appropriate) a joint resolution described in paragraph
9 (1)—

10 (A) in the case of the House of Representatives,
11 within three legislative days; and

12 (B) in the case of the Senate, within three ses-
13 sion days.

14 (3) A joint resolution described in paragraph (1) shall
15 not be subject to amendment at any stage of proceeding.

16 (b) A joint resolution described in subsection (a) shall
17 be referred in each House of Congress to the committees
18 having jurisdiction over the provision of law under which
19 the rule is issued.

20 (c) In the Senate, if the committee or committees to
21 which a joint resolution described in subsection (a) has
22 been referred have not reported it at the end of 15 session
23 days after its introduction, such committee or committees
24 shall be automatically discharged from further consider-
25 ation of the resolution and it shall be placed on the cal-

1 endar. A vote on final passage of the resolution shall be
2 taken on or before the close of the 15th session day after
3 the resolution is reported by the committee or committees
4 to which it was referred, or after such committee or com-
5 mittees have been discharged from further consideration
6 of the resolution.

7 (d)(1) In the Senate, when the committee or commit-
8 tees to which a joint resolution is referred have reported,
9 or when a committee or committees are discharged (under
10 subsection (c)) from further consideration of a joint reso-
11 lution described in subsection (a), it is at any time there-
12 after in order (even though a previous motion to the same
13 effect has been disagreed to) for a motion to proceed to
14 the consideration of the joint resolution, and all points of
15 order against the joint resolution (and against consider-
16 ation of the joint resolution) are waived. The motion is
17 not subject to amendment, or to a motion to postpone,
18 or to a motion to proceed to the consideration of other
19 business. A motion to reconsider the vote by which the
20 motion is agreed to or disagreed to shall not be in order.
21 If a motion to proceed to the consideration of the joint
22 resolution is agreed to, the joint resolution shall remain
23 the unfinished business of the Senate until disposed of.
24 (2) In the Senate, debate on the joint resolution, and
25 on all debatable motions and appeals in connection there-

1 with, shall be limited to not more than 2 hours, which
2 shall be divided equally between those favoring and those
3 opposing the joint resolution. A motion to further limit
4 debate is in order and not debatable. An amendment to,
5 or a motion to postpone, or a motion to proceed to the
6 consideration of other business, or a motion to recommit
7 the joint resolution is not in order.

8 (3) In the Senate, immediately following the conclu-
9 sion of the debate on a joint resolution described in sub-
10 section (a), and a single quorum call at the conclusion of
11 the debate if requested in accordance with the rules of the
12 Senate, the vote on final passage of the joint resolution
13 shall occur.

14 (4) Appeals from the decisions of the Chair relating
15 to the application of the rules of the Senate to the proce-
16 dure relating to a joint resolution described in subsection
17 (a) shall be decided without debate.

18 (e) In the House of Representatives, if any committee
19 to which a joint resolution described in subsection (a) has
20 been referred has not reported it to the House at the end
21 of 15 legislative days after its introduction, such com-
22 mittee shall be discharged from further consideration of
23 the joint resolution, and it shall be placed on the appro-
24 priate calendar. On the second and fourth Thursdays of
25 each month it shall be in order at any time for the Speaker

1 to recognize a Member who favors passage of a joint reso-
2 lution that has appeared on the calendar for at least 5
3 legislative days to call up that joint resolution for imme-
4 diate consideration in the House without intervention of
5 any point of order. When so called up a joint resolution
6 shall be considered as read and shall be debatable for 1
7 hour equally divided and controlled by the proponent and
8 an opponent, and the previous question shall be considered
9 as ordered to its passage without intervening motion. It
10 shall not be in order to reconsider the vote on passage.
11 If a vote on final passage of the joint resolution has not
12 been taken by the third Thursday on which the Speaker
13 may recognize a Member under this subsection, such vote
14 shall be taken on that day.

15 (f)(1) If, before passing a joint resolution described
16 in subsection (a), one House receives from the other a
17 joint resolution having the same text, then—

18 (A) the joint resolution of the other House shall
19 not be referred to a committee; and

20 (B) the procedure in the receiving House shall
21 be the same as if no joint resolution had been re-
22 ceived from the other House until the vote on pas-
23 sage, when the joint resolution received from the
24 other House shall supplant the joint resolution of
25 the receiving House.

1 (2) This subsection shall not apply to the House of
2 Representatives if the joint resolution received from the
3 Senate is a revenue measure.

4 (g) If either House has not taken a vote on final pas-
5 sage of the joint resolution by the last day of the period
6 described in section 12302(b)(2), then such vote shall be
7 taken on that day.

8 (h) This section and section 12304 are enacted by
9 Congress—

10 (1) as an exercise of the rulemaking power of
11 the Senate and House of Representatives, respec-
12 tively, and as such is deemed to be part of the rules
13 of each House, respectively, but applicable only with
14 respect to the procedure to be followed in that
15 House in the case of a joint resolution described in
16 subsection (a) and superseding other rules only
17 where explicitly so; and

18 (2) with full recognition of the Constitutional
19 right of either House to change the rules (so far as
20 they relate to the procedure of that House) at any
21 time, in the same manner and to the same extent as
22 in the case of any other rule of that House.

1 **SEC. 12304. CONGRESSIONAL DISAPPROVAL PROCEDURE**
2 **FOR NONMAJOR RULES.**

3 (a) For purposes of this section, the term “joint reso-
4 lution” means only a joint resolution introduced in the pe-
5 riod beginning on the date on which the report referred
6 to in section 12302(a)(1)(A) is received by Congress and
7 ending 60 days thereafter (excluding days either House
8 of Congress is adjourned for more than 3 days during a
9 session of Congress), the matter after the resolving clause
10 of which is as follows: “That Congress disapproves the
11 nonmajor rule submitted by the _____ relating to
12 _____, and such rule shall have no force or effect.” (The
13 blank spaces being appropriately filled in).

14 (b)(1) A joint resolution described in subsection (a)
15 shall be referred to the committees in each House of Con-
16 gress with jurisdiction.

17 (2) For purposes of this section, the term submission
18 or publication date means the later of the date on which—

19 (A) the Congress receives the report submitted
20 under section 12302(a)(1); or

21 (B) the nonmajor rule is published in the Fed-
22 eral Register, if so published.

23 (c) In the Senate, if the committee to which is re-
24 ferred a joint resolution described in subsection (a) has
25 not reported such joint resolution (or an identical joint
26 resolution) at the end of 15 session days after the date

1 of introduction of the joint resolution, such committee may
2 be discharged from further consideration of such joint res-
3 olution upon a petition supported in writing by 30 Mem-
4 bers of the Senate, and such joint resolution shall be
5 placed on the calendar.

6 (d)(1) In the Senate, when the committee to which
7 a joint resolution is referred has reported, or when a com-
8 mittee is discharged (under subsection (c)) from further
9 consideration of a joint resolution described in subsection
10 (a), it is at any time thereafter in order (even though a
11 previous motion to the same effect has been disagreed to)
12 for a motion to proceed to the consideration of the joint
13 resolution, and all points of order against the joint resolu-
14 tion (and against consideration of the joint resolution) are
15 waived. The motion is not subject to amendment, or to
16 a motion to postpone, or to a motion to proceed to the
17 consideration of other business. A motion to reconsider the
18 vote by which the motion is agreed to or disagreed to shall
19 not be in order. If a motion to proceed to the consideration
20 of the joint resolution is agreed to, the joint resolution
21 shall remain the unfinished business of the Senate until
22 disposed of.

23 (2) In the Senate, debate on the joint resolution, and
24 on all debatable motions and appeals in connection there-
25 with, shall be limited to not more than 10 hours, which

1 shall be divided equally between those favoring and those
2 opposing the joint resolution. A motion to further limit
3 debate is in order and not debatable. An amendment to,
4 or a motion to postpone, or a motion to proceed to the
5 consideration of other business, or a motion to recommit
6 the joint resolution is not in order.

7 (3) In the Senate, immediately following the conclu-
8 sion of the debate on a joint resolution described in sub-
9 section (a), and a single quorum call at the conclusion of
10 the debate if requested in accordance with the rules of the
11 Senate, the vote on final passage of the joint resolution
12 shall occur.

13 (4) Appeals from the decisions of the Chair relating
14 to the application of the rules of the Senate to the proce-
15 dure relating to a joint resolution described in subsection
16 (a) shall be decided without debate.

17 (e) In the Senate the procedure specified in sub-
18 section (c) or (d) shall not apply to the consideration of
19 a joint resolution respecting a nonmajor rule—

20 (1) after the expiration of the 60 session days
21 beginning with the applicable submission or publica-
22 tion date, or

23 (2) if the report under section 12302(a)(1)(A)
24 was submitted during the period referred to in sec-
25 tion 12302(d)(1), after the expiration of the 60 ses-

1 sion days beginning on the 15th session day after
2 the succeeding session of Congress first convenes.

3 (f) If, before the passage by one House of a joint res-
4 olution of that House described in subsection (a), that
5 House receives from the other House a joint resolution
6 described in subsection (a), then the following procedures
7 shall apply:

8 (1) The joint resolution of the other House
9 shall not be referred to a committee.

10 (2) With respect to a joint resolution described
11 in subsection (a) of the House receiving the joint
12 resolution—

13 (A) the procedure in that House shall be
14 the same as if no joint resolution had been re-
15 ceived from the other House; but

16 (B) the vote on final passage shall be on
17 the joint resolution of the other House.

18 **SEC. 12305. DEFINITIONS.**

19 In this subtitle:

20 (1) The term “Federal agency” means any
21 agency as that term is defined in section 551(1) of
22 title 5, United States Code.

23 (2) The term “major rule” means any rule, in-
24 cluding an interim final rule, that the Administrator
25 of the Office of Information and Regulatory Affairs

1 of the Office of Management and Budget finds has
2 resulted in or is likely to result in—

3 (A) an annual effect on the economy of
4 \$100,000,000 or more;

5 (B) a major increase in costs or prices for
6 consumers, individual industries, Federal,
7 State, or local government agencies, or geo-
8 graphic regions; or

9 (C) significant adverse effects on competi-
10 tion, employment, investment, productivity, in-
11 novation, or on the ability of United States-
12 based enterprises to compete with foreign-based
13 enterprises in domestic and export markets.

14 (3) The term “nonmajor rule” means any rule
15 that is not a major rule.

16 (4) The term “rule” has the meaning given
17 such term in section 551 of title 5, United States
18 Code, except that such term does not include—

19 (A) any rule of particular applicability, in-
20 cluding a rule that approves or prescribes for
21 the future rates, wages, prices, services, or al-
22 lowances therefore, corporate or financial struc-
23 tures, reorganizations, mergers, or acquisitions
24 thereof, or accounting practices or disclosures
25 bearing on any of the foregoing;

1 (B) any rule relating to agency manage-
2 ment or personnel; or

3 (C) any rule of agency organization, proce-
4 dure, or practice that does not substantially af-
5 fect the rights or obligations of non-agency par-
6 ties.

7 **SEC. 12306. JUDICIAL REVIEW.**

8 (a) No determination, finding, action, or omission
9 under this subtitle shall be subject to judicial review.

10 (b) Notwithstanding subsection (a), a court may de-
11 termine whether a Federal agency has completed the nec-
12 essary requirements under this subtitle for a rule to take
13 effect.

14 (c) The enactment of a joint resolution of approval
15 under section 12303 shall not be interpreted to serve as
16 a grant or modification of statutory authority by Congress
17 for the promulgation of a rule, shall not extinguish or af-
18 fect any claim, whether substantive or procedural, against
19 any alleged defect in a rule, and shall not form part of
20 the record before the court in any judicial proceeding con-
21 cerning a rule except for purposes of determining whether
22 or not the rule is in effect.

23 **SEC. 12307. EXEMPTION FOR MONETARY POLICY.**

24 Nothing in this subtitle shall apply to rules that con-
25 cern monetary policy proposed or implemented by the

1 Board of Governors of the Federal Reserve System or the
2 Federal Open Market Committee.

3 **SEC. 12308. EFFECTIVE DATE OF CERTAIN RULES.**

4 Notwithstanding section 12302—

5 (1) any rule that establishes, modifies, opens,
6 closes, or conducts a regulatory program for a com-
7 mercial, recreational, or subsistence activity related
8 to hunting, fishing, or camping; or

9 (2) any rule other than a major rule which an
10 agency for good cause finds (and incorporates the
11 finding and a brief statement of reasons therefore in
12 the rule issued) that notice and public procedure
13 thereon are impracticable, unnecessary, or contrary
14 to the public interest,

15 shall take effect at such time as the Federal agency pro-
16 mulgating the rule determines.