

Calendar No. 239

115TH CONGRESS
1ST SESSION

S. 21

[Report No. 115–169]

To amend chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2017

Mr. PAUL (for himself, Mr. BLUNT, Mr. YOUNG, Mr. ROUNDS, Mr. GRASSLEY, Mr. GARDNER, Mrs. ERNST, Mr. COTTON, Mrs. CAPITO, Mr. DAINES, Mr. MCCAIN, Mr. SCOTT, Mr. CRUZ, Mr. BARRASSO, Mr. CRAPO, Mr. THUNE, Mr. INHOFE, Mrs. FISCHER, Mr. JOHNSON, Mr. BOOZMAN, Mr. HELLER, Mr. SULLIVAN, Mr. ENZI, Mr. LEE, Mr. ROBERTS, Mr. SASSE, Mr. MORAN, Mr. CASSIDY, Mr. WICKER, Mr. CORNYN, Mr. RISCH, Mr. PERDUE, Mr. PORTMAN, Mr. FLAKE, Mr. KENNEDY, Mr. ISAKSON, Mr. RUBIO, and Mr. STRANGE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

OCTOBER 16, 2017

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To amend chapter 8 of title 5, United States Code, to provide that major rules of the executive branch shall have no force or effect unless a joint resolution of approval is enacted into law.

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 “Regulations from the
 5 Executive in Need of Scrutiny Act of 2017”.

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to increase accountability
 8 for and transparency in the Federal regulatory process.
 9 Section 1 of article I of the United States Constitution
 10 grants all legislative powers to Congress. Over time, Con-
 11 gress has excessively delegated its constitutional charge
 12 while failing to conduct appropriate oversight and retain
 13 accountability for the content of the laws it passes. By
 14 requiring a vote in Congress, the REINS Act will result
 15 in more carefully drafted and detailed legislation, an im-
 16 proved regulatory process, and a legislative branch that
 17 is truly accountable to the American people for the laws
 18 imposed upon them.

19 **SEC. 3. CONGRESSIONAL REVIEW OF AGENCY RULE-**
 20 **MAKING.**

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

23 **“CHAPTER 8—CONGRESSIONAL REVIEW**
 24 **OF AGENCY RULEMAKING**

“Sec.

“801. Congressional review.

“802. Congressional approval procedure for major rules.

“803. Congressional disapproval procedure for nonmajor rules.

“804. Definitions.

“805. Judicial review.

“806. Exemption for monetary policy.

“807. Effective date of certain rules.

1 “§ 801. Congressional review

2 “(a)(1)(A) Before a rule may take effect, the Federal
3 agency promulgating such rule shall publish in the Federal
4 Register a list of information on which the rule is based,
5 including data, scientific and economic studies, and cost-
6 benefit analyses, and identify how the public can access
7 such information online, and shall submit to each House
8 of the Congress and to the Comptroller General a report
9 containing—

10 “(i) a copy of the rule;

11 “(ii) a concise general statement relating to the
12 rule;

13 “(iii) a classification of the rule as a major or
14 nonmajor rule, including an explanation of the clas-
15 sification specifically addressing each criteria for a
16 major rule contained within subparagraphs (A)
17 through (C) of section 804(2);

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

23 “(v) the proposed effective date of the rule.

1 “(B) On the date of the submission of the report
2 under subparagraph (A), the Federal agency promulgating
3 the rule shall submit to the Comptroller General and make
4 available to each House of Congress—

5 “(i) a complete copy of the cost-benefit analysis
6 of the rule, if any, including an analysis of any jobs
7 added or lost, differentiating between public and pri-
8 vate sector jobs;

9 “(ii) the agency’s actions pursuant to sections
10 603, 604, 605, 607, and 609 of this title;

11 “(iii) the agency’s actions pursuant to sections
12 202, 203, 204, and 205 of the Unfunded Mandates
13 Reform Act of 1995; and

14 “(iv) any other relevant information or require-
15 ments under any other Act and any relevant Execu-
16 tive orders.

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

24 “(2)(A) The Comptroller General shall provide a re-
25 port on each major rule to the committees of jurisdiction

1 by the end of 15 calendar days after the submission or
2 publication date. The report of the Comptroller General
3 shall include an assessment of the agency's compliance
4 with procedural steps required by paragraph (1)(B) and
5 an assessment of whether the major rule imposes any new
6 limits or mandates on private-sector activity.

7 “(B) Federal agencies shall cooperate with the Comp-
8 troller General by providing information relevant to the
9 Comptroller General's report under subparagraph (A).

10 “(3) A major rule relating to a report submitted
11 under paragraph (1) shall take effect upon enactment of
12 a joint resolution of approval described in section 802 or
13 as provided for in the rule following enactment of a joint
14 resolution of approval described in section 802, whichever
15 is later.

16 “(4) A nonmajor rule shall take effect as provided
17 by section 803 after submission to Congress under para-
18 graph (1).

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

1 “(b)(1) A major rule shall not take effect unless the
 2 Congress enacts a joint resolution of approval described
 3 under section 802.

4 “(2) If a joint resolution described in subsection (a)
 5 is not enacted into law by the end of 70 session days or
 6 legislative days, as applicable, beginning on the date on
 7 which the report referred to in *subsection 801(a)(1)(A)* is
 8 received by Congress (excluding days either House of Con-
 9 gress is adjourned for more than 3 days during a session
 10 of Congress), then the rule described in that resolution
 11 shall be deemed not to be approved and such rule shall
 12 not take effect.

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

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

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

24 “(B) necessary for the enforcement of criminal
 25 laws;

1 “(C) necessary for national security; or

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

4 “(3) An exercise by the President of the authority
5 under this subsection shall have no effect on the proce-
6 dures under section 802.

7 “(d)(1) In addition to the opportunity for review oth-
8 erwise provided under this chapter, in the case of any rule
9 for which a report was submitted in accordance with sub-
10 section (a)(1)(A) during the period beginning on the date
11 occurring—

12 “(A) in the case of the Senate, 60 session days;
13 or

14 “(B) in the case of the House of Representa-
15 tives, 60 legislative days,

16 before the date the Congress is scheduled to adjourn a
17 session of Congress through the date on which the same
18 or succeeding Congress first convenes its next session, sec-
19 tions 802 and 803 shall apply to such rule in the suc-
20 ceeding session of Congress.

21 “(2)(A) In applying sections 802 and 803 for pur-
22 poses of such additional review, a rule described under
23 paragraph (1) shall be treated as though—

24 “(i) such rule were published in the Federal
25 Register on—

1 “(I) in the case of the Senate, the 15th
2 session day; or

3 “(II) in the case of the House of Rep-
4 resentatives, the 15th legislative day,
5 after the succeeding session of Congress first con-
6 venes; and

7 “(ii) a report on such rule were submitted to
8 Congress under subsection (a)(1) on such date.

9 “(B) Nothing in this paragraph shall be construed
10 to affect the requirement under subsection (a)(1) that a
11 report shall be submitted to Congress before a rule can
12 take effect.

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

16 **“§ 802. Congressional approval procedure for major**
17 **rules**

18 “(a)(1) For purposes of this section, the term ‘joint
19 resolution’ means only a joint resolution addressing a re-
20 port classifying a rule as major pursuant to section
21 801(a)(1)(A)(iii) that—

22 “(A) bears no preamble;

23 “(B) bears the following title (with blanks filled
24 as appropriate): ‘Approving the rule submitted by
25 _____ relating to _____.’;

1 “(C) includes after its resolving clause only the
2 following (with blanks filled as appropriate): ‘That
3 Congress approves the rule submitted by _____ re-
4 lating to _____.’; and

5 “(D) is introduced pursuant to paragraph (2).

6 “(2) After a House of Congress receives a report
7 classifying a rule as major pursuant to section
8 801(a)(1)(A)(iii), the majority leader of that House (or
9 his or her respective designee) shall introduce (by request,
10 if appropriate) a joint resolution described in paragraph
11 (1)—

12 “(A) in the case of the House of Representa-
13 tives, within 3 legislative days; and

14 “(B) in the case of the Senate, within 3 session
15 days.

16 “(3) A joint resolution described in paragraph (1)
17 shall not be subject to amendment at any stage of pro-
18 ceeding.

19 “(b) A joint resolution described in subsection (a)
20 shall be referred in each House of Congress to the commit-
21 tees having jurisdiction over the provision of law under
22 which the rule is issued.

23 “(c) In the Senate, if the committee or committees
24 to which a joint resolution described in subsection (a) has
25 been referred have not reported it at the end of 15 session

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

10 “(d)(1) In the Senate, when the committee or com-
11 mittees to which a joint resolution is referred have re-
12 ported, or when a committee or committees are discharged
13 (under subsection (c)) from further consideration of a
14 joint resolution described in subsection (a), it is at any
15 time thereafter in order (even though a previous motion
16 to the same effect has been disagreed to) for a motion
17 to proceed to the consideration of the joint resolution, and
18 all points of order against the joint resolution (and against
19 consideration of the joint resolution) are waived. The mo-
20 tion is not subject to amendment, or to a motion to post-
21 pone, or to a motion to proceed to the consideration of
22 other business. A motion to reconsider the vote by which
23 the motion is agreed to or disagreed to shall not be in
24 order. If a motion to proceed to the consideration of the
25 joint resolution is agreed to, the joint resolution shall re-

1 main the unfinished business of the Senate until disposed
2 of.

3 “(2) In the Senate, debate on the joint resolution,
4 and on all debatable motions and appeals in connection
5 therewith, shall be limited to not more than 2 hours, which
6 shall be divided equally between those favoring and those
7 opposing the joint resolution. A motion to further limit
8 debate is in order and not debatable. An amendment to,
9 or a motion to postpone, or a motion to proceed to the
10 consideration of other business, or a motion to recommit
11 the joint resolution is not in order.

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

18 “(4) Appeals from the decisions of the Chair relating
19 to the application of the rules of the Senate to the proce-
20 dure relating to a joint resolution described in subsection
21 (a) shall be decided without debate.

22 “(e) In the House of Representatives, if any com-
23 mittee to which a joint resolution described in subsection
24 (a) has been referred has not reported it to the House
25 at the end of 15 legislative days after its introduction,

1 such committee shall be discharged from further consider-
 2 ation of the joint resolution, and it shall be placed on the
 3 appropriate calendar. On the second and fourth Thursdays
 4 of each month it shall be in order at any time for the
 5 Speaker to recognize a Member who favors passage of a
 6 joint resolution that has appeared on the calendar for at
 7 least 5 legislative days to call up that joint resolution for
 8 immediate consideration in the House without intervention
 9 of any point of order. When so called up a joint resolution
 10 shall be considered as read and shall be debatable for 1
 11 hour equally divided and controlled by the proponent and
 12 an opponent, and the previous question shall be considered
 13 as ordered to its passage without intervening motion. It
 14 shall not be in order to reconsider the vote on passage.
 15 If a vote on final passage of the joint resolution has not
 16 been taken by the third Thursday on which the Speaker
 17 may recognize a Member under this subsection, such vote
 18 shall be taken on that day.

19 “(f)(1) If, before passing a joint resolution described
 20 in subsection (a), one House receives from the other a
 21 joint resolution having the same text, then—

22 “(A) the joint resolution of the other House
 23 shall not be referred to a committee; and

24 “(B) the procedure in the receiving House shall
 25 be the same as if no joint resolution had been re-

1 ceived from the other House until the vote on pas-
 2 sage, when the joint resolution received from the
 3 other House shall supplant the joint resolution of
 4 the receiving House.

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

8 “(g) If either House has not taken a vote on final
 9 passage of the joint resolution by the last day of the period
 10 described in section 801(b)(2), then such vote shall be
 11 taken on that day.

12 “(h) This section and section 803 are enacted by
 13 Congress—

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

22 “(2) with full recognition of the constitutional
 23 right of either House to change the rules (so far as
 24 they relate to the procedure of that House) at any

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

3 **“§ 803. Congressional disapproval procedure for**
4 **nonmajor rules**

5 “(a) For purposes of this section, the term ‘joint res-
6 olution’ means only a joint resolution introduced in the
7 period beginning on the date on which the report referred
8 to in section 801(a)(1)(A) is received by Congress and
9 ending 60 days thereafter (excluding days either House
10 of Congress is adjourned for more than 3 days during a
11 session of Congress), the matter after the resolving clause
12 of which is as follows: ‘That Congress disapproves the
13 nonmajor rule submitted by the _____ relating to
14 _____, and such rule shall have no force or effect.’ (The
15 blank spaces being appropriately filled in).

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

19 “(c) In the Senate, if the committee to which is re-
20 ferred a joint resolution described in subsection (a) has
21 not reported such joint resolution (or an identical joint
22 resolution) at the end of 15 session days after the date
23 of introduction of the joint resolution, such committee may
24 be discharged from further consideration of such joint res-
25 olution upon a petition supported in writing by 30 Mem-

1 bers of the Senate, and such joint resolution shall be
2 placed on the calendar.

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

20 “(2) In the Senate, debate on the joint resolution,
21 and on all debatable motions and appeals in connection
22 therewith, shall be limited to not more than 10 hours,
23 which shall be divided equally between those favoring and
24 those opposing the joint resolution. A motion to further
25 limit debate is in order and not debatable. An amendment

1 to, or a motion to postpone, or a motion to proceed to
2 the consideration of other business, or a motion to recom-
3 mit the joint resolution is not in order.

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

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

14 “(e) In the Senate, the procedure specified in sub-
15 section (c) or (d) shall not apply to the consideration of
16 a joint resolution respecting a nonmajor rule—

17 “(1) after the expiration of the 60 session days
18 beginning with the applicable submission or publica-
19 tion date; or

20 “(2) if the report under section 801(a)(1)(A)
21 was submitted during the period referred to in sec-
22 tion 801(d)(1), after the expiration of the 60 session
23 days beginning on the 15th session day after the
24 succeeding session of Congress first convenes.

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

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

8 “(2) With respect to a joint resolution described
 9 in subsection (a) of the House receiving the joint
 10 resolution—

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

14 “(B) the vote on final passage shall be on
 15 the joint resolution of the other House.

16 **“§ 804. Definitions**

17 “For purposes of this chapter:

18 “(1) The term ‘Federal agency’ means any
 19 agency as that term is defined in section 551(1).

20 “(2) The term ‘major rule’ means any rule, in-
 21 cluding an interim final rule, that the Administrator
 22 of the Office of Information and Regulatory Affairs
 23 of the Office of Management and Budget finds has
 24 resulted in or is likely to result in—

1 “(A) an annual effect on the economy of
2 \$100 million or more;

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

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

12 “(3) The term ‘nonmajor rule’ means any rule
13 that is not a major rule.

14 “(4) The term ‘rule’ has the meaning given
15 such term in section 551, except that such term does
16 not include—

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

24 “(B) any rule relating to agency manage-
25 ment or personnel; or

1 “(C) any rule of agency organization, pro-
 2 cedure, or practice that does not substantially
 3 affect the rights or obligations of non-agency
 4 parties.

5 “(5) The term ‘submission or publication date’,
 6 except as otherwise provided in this chapter,
 7 means—

8 “(A) in the case of a major rule, the date
 9 on which the Congress receives the report sub-
 10 mitted under section 801(a)(1); and

11 “(B) in the case of a nonmajor rule, the
 12 later of—

13 “(i) the date on which the Congress
 14 receives the report submitted under section
 15 801(a)(1); and

16 “(ii) the date on which the nonmajor
 17 rule is published in the Federal Register, if
 18 so published.

19 **“§ 805. Judicial review**

20 “(a) No determination, finding, action, or omission
 21 under this chapter shall be subject to judicial review.

22 “(b) Notwithstanding subsection (a), a court may de-
 23 termine whether a Federal agency has completed the nec-
 24 essary requirements under this chapter for a rule to take
 25 effect.

1 “(c) The enactment of a joint resolution of approval
 2 under section 802 shall not be interpreted to serve as a
 3 grant or modification of statutory authority by Congress
 4 for the promulgation of a rule, shall not extinguish or af-
 5 fect any claim, whether substantive or procedural, against
 6 any alleged defect in a rule, and shall not form part of
 7 the record before the court in any judicial proceeding con-
 8 cerning a rule except for purposes of determining whether
 9 or not the rule is in effect.

10 **“§ 806. Exemption for monetary policy**

11 “Nothing in this chapter shall apply to rules that con-
 12 cern monetary policy proposed or implemented by the
 13 Board of Governors of the Federal Reserve System or the
 14 Federal Open Market Committee.

15 **“§ 807. Effective date of certain rules**

16 “Notwithstanding section 801—

17 “(1) any rule that establishes, modifies, opens,
 18 closes, or conducts a regulatory program for a com-
 19 mercial, recreational, or subsistence activity related
 20 to hunting, fishing, or camping; or

21 “(2) any rule other than a major rule which an
 22 agency for good cause finds (and incorporates the
 23 finding and a brief statement of reasons therefore in
 24 the rule issued) that notice and public procedure

1 thereon are impracticable, unnecessary, or contrary
 2 to the public interest,
 3 shall take effect at such time as the Federal agency pro-
 4 mulgating the rule determines.”.

5 **SEC. 4. BUDGETARY EFFECTS OF RULES SUBJECT TO SEC-**
 6 **TION 802 OF TITLE 5, UNITED STATES CODE.**

7 Section 257(b)(2) of the Balanced Budget and Emer-
 8 gency Deficit Control Act of 1985 (2 U.S.C. 907(b)(2))
 9 is amended by adding at the end the following new sub-
 10 paragraph:

11 “(E) BUDGETARY EFFECTS OF RULES
 12 SUBJECT TO SECTION 802 OF TITLE 5, UNITED
 13 STATES CODE.—Any rule s subject to the con-
 14 gressional approval procedure set forth in sec-
 15 tion 802 of chapter 8 of title 5, United States
 16 Code, affecting budget authority, outlays, or re-
 17 ceipts shall be assumed to be effective unless it
 18 is not approved in accordance with such sec-
 19 tion.”.

20 **SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF**
 21 **RULES.**

22 (a) IN GENERAL.—The Comptroller General of the
 23 United States shall conduct a study to determine, as of
 24 the date of the enactment of this Act—

1 (1) how many rules (as such term is defined in
2 section 804 of title 5, United States Code) were in
3 effect;

4 (2) how many major rules (as such term is de-
5 fined in section 804 of title 5, United States Code)
6 were in effect; and

7 (3) the total estimated economic cost imposed
8 by all such rules.

9 (b) REPORT.—Not later than 1 year after the date
10 of the enactment of this Act, the Comptroller General of
11 the United States shall submit a report to Congress that
12 contains the findings of the study conducted under sub-
13 section (a).

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