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1ST SESSION

S. 299

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

FEBRUARY 7, 2011

Mr. PAUL (for himself, Mr. DEMINT, Mr. ENSIGN, Mr. GRASSLEY, Mr. COBURN, Mr. BLUNT, Mr. THUNE, Mr. ENZI, Mr. CORNYN, Mr. HATCH, Mr. CHAMBLISS, Mr. JOHNSON of Wisconsin, Mr. ISAKSON, Mr. BARRASSO, Mr. WICKER, Ms. AYOTTE, Mr. SESSIONS, Mr. PORTMAN, Mr. JOHANNES, Mr. BOOZMAN, Mr. VITTER, Mr. LEE, Mr. INHOFE, Mrs. HUTCHISON, and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Regulations From the
3 Executive in Need of Scrutiny Act of 2011” or the
4 “REINS Act”.

5 **SEC. 2. FINDINGS AND PURPOSE.**

6 (a) FINDINGS.—Congress finds the following:

7 (1) Section 1 of article I of the United States
8 Constitution grants all legislative powers to Con-
9 gress.

10 (2) Over time, Congress has excessively dele-
11 gated its constitutional charge while failing to con-
12 duct appropriate oversight and retain accountability
13 for the content of the laws it passes.

14 (3) By requiring a vote in Congress, this Act
15 will result in more carefully drafted and detailed leg-
16 islation, an improved regulatory process, and a legis-
17 lative branch that is truly accountable to the people
18 of the United States for the laws imposed upon
19 them.

20 (b) PURPOSE.—The purpose of this Act is to increase
21 accountability for and transparency in the Federal regu-
22 latory process.

23 **SEC. 3. CONGRESSIONAL REVIEW OF AGENCY RULE-**
24 **MAKING.**

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

1 **“CHAPTER 8—CONGRESSIONAL REVIEW**
 2 **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.

3 **“§ 801. 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 sections 804(2)(A),
 15 804(2)(B), and 804(2)(C);

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.

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;

7 “(ii) the agency’s actions pursuant to title 5 of
8 the United States Code, sections 603, 604, 605,
9 607, and 609;

10 “(iii) the agency’s actions pursuant to title 2 of
11 the United States Code, sections 1532, 1533, 1534,
12 and 1535; and

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

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

23 “(2)(A) The Comptroller General shall provide a re-
24 port on each major rule to the committees of jurisdiction
25 by the end of 15 calendar days after the submission or

1 publication date as provided in section 802(b)(2). The re-
2 port of the Comptroller General shall include an assess-
3 ment of the agency's compliance with procedural steps re-
4 quired by paragraph (1)(B).

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

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

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

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

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

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

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

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

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

21 “(B) necessary for the enforcement of criminal
22 laws;

23 “(C) necessary for national security; or

24 “(D) issued pursuant to any statute imple-
25 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 802.

4 “(d)(1) In addition to the opportunity for review oth-
5 erwise provided under this chapter, 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 Representa-
12 tives, 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 802 and 803 shall apply to such rule in the suc-
17 ceeding session of Congress.

18 “(2)(A) In applying sections 802 and 803 for pur-
19 poses 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
22 Register on—

23 “(I) in the case of the Senate, the 15th
24 session day, or

1 “(1) In the House, the majority leader of the
2 House of Representatives (or his designee) and the
3 minority leader of the House of Representatives (or
4 his designee) shall introduce such joint resolution
5 described in subsection (a) (by request), within 3
6 legislative days after Congress receives the report re-
7 ferred to in section 801(a)(1)(A).

8 “(2) In the Senate, the majority leader of the
9 Senate (or his designee) and the minority leader of
10 the Senate (or his designee) shall introduce such
11 joint resolution described in subsection (a) (by re-
12 quest), within 3 session days after Congress receives
13 the report referred to in section 801(a)(1)(A).

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 under the rules of the House of
17 Representatives or the Senate to report a bill to amend
18 the provision of law under which the rule is issued.

19 “(2) For purposes of this section, the term ‘submis-
20 sion date’ means the date on which the Congress receives
21 the report submitted under section 801(a)(1).

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

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

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

1 such committee or committees shall be automatically dis-
2 charged from further consideration of the resolution and
3 it shall be placed on the appropriate calendar. A vote on
4 final passage of the resolution shall be taken on or before
5 the close of the 15th legislative day after the resolution
6 is reported by the committee or committees to which it
7 was referred, or after such committee or committees have
8 been discharged from further consideration of the resolu-
9 tion.

10 “(2)(A) A motion in the House of Representatives to
11 proceed to the consideration of a resolution shall be privi-
12 leged and not debatable. An amendment to the motion
13 shall not be in order, nor shall it be in order to move to
14 reconsider the vote by which the motion is agreed to or
15 disagreed to.

16 “(B) Debate in the House of Representatives on a
17 resolution shall be limited to not more than two hours,
18 which shall be divided equally between those favoring and
19 those opposing the resolution. A motion to further limit
20 debate shall not be debatable. No amendment to, or mo-
21 tion to recommit, the resolution shall be in order. It shall
22 not be in order to reconsider the vote by which a resolution
23 is agreed to or disagreed to.

24 “(C) Motions to postpone, made in the House of Rep-
25 resentatives with respect to the consideration of a resolu-

1 tion, and motions to proceed to the consideration of other
2 business, shall be decided without debate.

3 “(D) All appeals from the decisions of the Chair re-
4 lating to the application of the Rules of the House of Rep-
5 resentatives to the procedure relating to a resolution shall
6 be decided without debate.

7 “(f) If, before the passage by one House of a joint
8 resolution of that House described in subsection (a), that
9 House receives from the other House a joint resolution
10 described in subsection (a), then the following procedures
11 shall apply with respect to a joint resolution described in
12 subsection (a) of the House receiving the joint resolu-
13 tion—

14 “(1) the procedure in that House shall be the
15 same as if no joint resolution had been received from
16 the other House; but

17 “(2) the vote on final passage shall be on the
18 joint resolution of the other House.

19 “(g) The enactment of a resolution of approval does
20 not serve as a grant or modification of statutory authority
21 by Congress for the promulgation of a rule, does not extin-
22 guish or affect any claim, whether substantive or proce-
23 dural, against any alleged defect in a rule, and shall not
24 form part of the record before the court in any judicial
25 proceeding concerning a rule.

1 “(h) This section and section 803 are enacted by
2 Congress—

3 “(1) as an exercise of the rulemaking power of
4 the Senate and House of Representatives, respec-
5 tively, and as such it is deemed a part of the rules
6 of each House, respectively, but applicable only with
7 respect to the procedure to be followed in that
8 House in the case of a joint resolution described in
9 subsection (a), and it supersedes other rules only to
10 the extent that it is inconsistent with such rules; and

11 “(2) with full recognition of the constitutional
12 right of either House to change the rules (so far as
13 relating to the procedure of that House) at any time,
14 in the same manner, and to the same extent as in
15 the case of any other rule of that House.

16 **“§ 803. Congressional disapproval procedure for**
17 **nonmajor rules**

18 “(a) For purposes of this section, the term ‘joint res-
19 olution’ means only a joint resolution introduced in the
20 period beginning on the date on which the report referred
21 to in section 801(a)(1)(A) is received by Congress and
22 ending 60 days thereafter (excluding days either House
23 of Congress is adjourned for more than 3 days during a
24 session of Congress), the matter after the resolving clause
25 of which is as follows: ‘That Congress disapproves the

1 nonmajor rule submitted by the ___ ___ relating to ___ ___,
2 and such rule shall have no force or effect.’ (The blank
3 spaces being appropriately filled in).

4 “(b)(1) A joint resolution described in subsection (a)
5 shall be referred to the committees in each House of Con-
6 gress with jurisdiction.

7 “(2) For purposes of this section, the term ‘submis-
8 sion or publication date’ means the later of the date on
9 which—

10 “(A) the Congress receives the report submitted
11 under section 801(a)(1); or

12 “(B) the nonmajor rule is published in the Fed-
13 eral Register, if so published.

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

23 “(d)(1) In the Senate, when the committee to which
24 a joint resolution is referred has reported, or when a com-
25 mittee is discharged (under subsection (c)) from further

1 consideration of a joint resolution described in subsection
2 (a), it is at any time thereafter in order (even though a
3 previous motion to the same effect has been disagreed to)
4 for a motion to proceed to the consideration of the joint
5 resolution, and all points of order against the joint resolu-
6 tion (and against consideration of the joint resolution) are
7 waived. The motion is not subject to amendment, or to
8 a motion to postpone, or to a motion to proceed to the
9 consideration of other business. A motion to reconsider the
10 vote by which the motion is agreed to or disagreed to shall
11 not be in order. If a motion to proceed to the consideration
12 of the joint resolution is agreed to, the joint resolution
13 shall remain the unfinished business of the Senate until
14 disposed of.

15 “(2) In the Senate, debate on the joint resolution,
16 and on all debatable motions and appeals in connection
17 therewith, shall be limited to not more than 10 hours,
18 which shall be divided equally between those favoring and
19 those opposing the joint resolution. A motion to further
20 limit debate is in order and not debatable. An amendment
21 to, or a motion to postpone, or a motion to proceed to
22 the consideration of other business, or a motion to recom-
23 mit the joint resolution is not in order.

24 “(3) In the Senate, immediately following the conclu-
25 sion of the debate on a joint resolution described in sub-

1 section (a), and a single quorum call at the conclusion of
2 the debate if requested in accordance with the rules of the
3 Senate, the vote on final passage of the joint resolution
4 shall occur.

5 “(4) Appeals from the decisions of the Chair relating
6 to the application of the rules of the Senate to the proce-
7 dure relating to a joint resolution described in subsection
8 (a) shall be decided without debate.

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

12 “(1) after the expiration of the 60 session days
13 beginning with the applicable submission or publica-
14 tion date, or

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

20 “(f) If, before the passage by one House of a joint
21 resolution of that House described in subsection (a), that
22 House receives from the other House a joint resolution
23 described in subsection (a), then the following procedures
24 shall apply:

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

3 “(2) With respect to a joint resolution described
4 in subsection (a) of the House receiving the joint
5 resolution—

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

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

11 **“§ 804. Definitions**

12 “For purposes of this chapter—

13 “(1) the term ‘Federal agency’ means any agen-
14 cy as that term is defined in section 551(1);

15 “(2) the term ‘major rule’ means any rule, in-
16 cluding an interim final rule, that the Administrator
17 of the Office of Information and Regulatory Affairs
18 of the Office of Management and Budget finds has
19 resulted in or is likely to result in—

20 “(A) an annual effect on the economy of
21 \$100,000,000 or more;

22 “(B) a major increase in costs or prices for
23 consumers, individual industries, Federal,
24 State, or local government agencies, or geo-
25 graphic regions; or

1 “(C) significant adverse effects on competi-
2 tion, employment, investment, productivity, in-
3 novation, or on the ability of United States-
4 based enterprises to compete with foreign-based
5 enterprises in domestic and export markets;

6 “(3) the term ‘nonmajor rule’ means any rule
7 that is not a major rule; and

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

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

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

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

1 **“§ 805. Judicial review**

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

4 “(b) Notwithstanding subsection (a), a court may de-
5 termine whether a Federal agency has completed the nec-
6 essary requirements under this chapter for a rule to take
7 effect.

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

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

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

14 “Notwithstanding section 801—

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

19 “(2) any rule other than a major rule which an
20 agency for good cause finds (and incorporates the
21 finding and a brief statement of reasons therefore in
22 the rule issued) that notice and public procedure
23 thereon are impracticable, unnecessary, or contrary
24 to the public interest,

1 shall take effect at such time as the Federal agency pro-
2 mulgating the rule determines.”.

○