

111TH CONGRESS  
2D SESSION

# S. 3826

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.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 2010

Mr. DEMINT (for himself, Mr. SESSIONS, Mr. GRASSLEY, Mr. COBURN, Mr. CORNYN, Mr. ENSIGN, Mr. VITTER, Mr. THUNE, Mr. RISCH, Mr. INHOFE, Mr. ENZI, Mr. WICKER, and Mr. HATCH) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## 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 2010”.

### 6   **SEC. 2. FINDINGS.**

7       Congress finds that—

1           (1) section 1 of article I of the Constitution  
2 grants all legislative powers to Congress;

3           (2) section 8 of article I of the Constitution  
4 provides that Congress has the power “to make all  
5 laws which shall be necessary and proper for car-  
6 rying into execution the foregoing powers”;

7           (3) Congress regularly delegates its constitu-  
8 tional powers to the executive branch and its agen-  
9 cies for the purpose of drafting rules;

10          (4) many of the rules created by the executive  
11 branch and its agencies are not drafted or do not  
12 come into effect until years after the Act of Con-  
13 gress authorizing their creation;

14          (5) such rules can have substantial compliance  
15 or other financial costs on American families, busi-  
16 nesses, and local governments;

17          (6) the drafters of Federal rules are not ac-  
18 countable directly to the people of the United States  
19 through regular elections;

20          (7) during calendar year 2009, the Government  
21 Accountability Office received a total of 3,836 final  
22 rules, including 80 major rules;

23          (8) the current executive rule review process  
24 provided for in the provision of law commonly known  
25 as the Congressional Review Act has only been exer-

1 cised by Congress once since its enactment in 1996  
 2 to reject a rule;

3 (9) delegation of congressional powers to the  
 4 executive branch and its agencies augments the  
 5 power of the executive branch and fails to require  
 6 that sitting members of Congress are accountable  
 7 for finalized rules; and

8 (10) Congress must exercise greater account-  
 9 ability for its delegation of constitutional authority  
 10 and the impact that such delegation has on the peo-  
 11 ple, businesses, and State and local governments of  
 12 the United States.

13 **SEC. 3. CONGRESSIONAL REVIEW OF AGENCY RULE-**  
 14 **MAKING.**

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

17 **“CHAPTER 8—CONGRESSIONAL REVIEW**  
 18 **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.

19 **“§ 801. Congressional review**

20 “(a)(1)(A) Before a rule may take effect, the Federal  
 21 agency promulgating such rule shall submit to each House

1 of the Congress and to the Comptroller General a report  
2 containing—

3 “(i) a copy of the rule;

4 “(ii) a concise general statement relating to the  
5 rule, including whether it is a major rule; and

6 “(iii) the proposed effective date of the rule.

7 “(B) On the date of the submission of the report  
8 under subparagraph (A), the Federal agency promulgating  
9 the rule shall submit to the Comptroller General and make  
10 available to each House of Congress—

11 “(i) a complete copy of the cost-benefit analysis  
12 of the rule, if any;

13 “(ii) the agency’s actions relevant to sections  
14 603, 604, 605, 607, and 609;

15 “(iii) the agency’s actions relevant to sections  
16 202, 203, 204, and 205 of the Unfunded Mandates  
17 Reform Act of 1995; and

18 “(iv) any other relevant information or require-  
19 ments under any other Act and any relevant Execu-  
20 tive orders.

21 “(C) Upon receipt of a report submitted under sub-  
22 paragraph (A), each House shall provide copies of the re-  
23 port to the chairman and ranking member of each stand-  
24 ing committee with jurisdiction under the rules of the  
25 House of Representatives or the Senate to report a bill

1 to amend the provision of law under which the rule is  
2 issued.

3 “(2)(A) The Comptroller General shall provide a re-  
4 port on each major rule to the committees of jurisdiction  
5 in each House of the Congress by the end of 15 calendar  
6 days after the submission or publication date as provided  
7 in section 802(b)(2). The report of the Comptroller Gen-  
8 eral shall include an assessment of the agency’s compli-  
9 ance with procedural steps required by paragraph (1)(B).

10 “(B) Federal agencies shall cooperate with the Comp-  
11 troller General by providing information relevant to the  
12 Comptroller General’s report under subparagraph (A).

13 “(3) A major rule relating to a report submitted  
14 under paragraph (1) shall take effect immediately or as  
15 provided for in the rule, whichever is later, if a joint reso-  
16 lution of approval described in section 802 becomes law.

17 “(4) A nonmajor major rule shall take effect as pro-  
18 vided by section 803 after submission to Congress under  
19 paragraph (1).

20 “(5) If a joint resolution of approval relating to a  
21 major rule is not enacted within the period provided in  
22 subsection (b)(2), then a joint resolution of approval relat-  
23 ing to the same or a substantially similar rule may not  
24 be considered under this chapter in the same Congress by  
25 either the House of Representatives 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 90 session days or  
6 legislative days, as applicable, beginning after the date  
7 such resolution is introduced, then the rule described in  
8 that resolution shall be deemed not to be approved and  
9 such rule shall 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 other than a major rule for which a report was submitted  
 7 in accordance with subsection (a)(1)(A) during the period  
 8 beginning on the date 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 adjourns a session of Con-  
 14 gress through the date on which the same or succeeding  
 15 Congress first convenes its next session, section 803 shall  
 16 apply to such rule in the succeeding session of Congress.

17 “(2)(A) In applying 803 for purposes of such addi-  
 18 tional review, a rule described under paragraph (1) shall  
 19 be treated as though—

20 “(i) such rule were published in the Federal  
 21 Register (as a rule that shall take effect) on—

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

24 “(II) in the case of the House of Rep-  
 25 resentatives, the 15th legislative day,

1 after the succeeding session of Congress first con-  
 2 venes; and

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

5 “(B) Nothing in this paragraph shall be construed  
 6 to affect the requirement under subsection (a)(1) that a  
 7 report shall be submitted to Congress before a rule can  
 8 take effect.

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

12 **“§ 802. Congressional approval procedure for major**  
 13 **rules**

14 “(a) For purposes of this section, the term ‘joint res-  
 15 olution’ means only a joint resolution introduced in the  
 16 period beginning on the date on which the report referred  
 17 to in section 801(a)(1)(A) is received by Congress (exclud-  
 18 ing days either House of Congress is adjourned for more  
 19 than 3 days during a session of Congress), the matter  
 20 after the resolving clause of which is as follows: ‘That Con-  
 21 gress approves the rule submitted by the \_\_\_ \_\_\_ relating  
 22 to \_\_\_ \_\_.’ (The blank spaces being appropriately filled in).

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



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

4       “(c) In the Senate, if the committee to which is re-  
5   ferred a joint resolution described in subsection (a) has  
6   not reported such joint resolution (or an identical joint  
7   resolution) at the end of 15 session days after the date  
8   of introduction of the joint resolution, such committee may  
9   be discharged from further consideration of such joint res-  
10   olution upon a petition supported in writing by 30 Mem-  
11   bers of the Senate, and such joint resolution shall be  
12   placed on the calendar.

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

1 not be in order. If a motion to proceed to the consideration  
2 of the joint resolution is agreed to, the joint resolution  
3 shall remain the unfinished business of the Senate until  
4 disposed of.

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

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

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

24 “(e)(1) In the House of Representatives, if the com-  
25 mittee or committees to which a joint resolution described

1 in subsection (a) has been referred have not reported it  
2 at the end of 15 legislative days after its introduction,  
3 such committee shall be automatically discharged from  
4 further consideration of the resolution and it shall be  
5 placed on the appropriate calendar. A vote on final pas-  
6 sage of the resolution shall be taken on or before the close  
7 of the 15th legislative day after the resolution is reported  
8 by the committee to which it was referred, or after such  
9 committee has been discharged from further consideration  
10 of the resolution.

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

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

1       “(C) Motions to postpone, made in the House of Rep-  
2       resentatives with respect to the consideration of a resolu-  
3       tion, and motions to proceed to the consideration of other  
4       business, shall be decided without debate.

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

9       “(E) Except to the extent specifically provided in the  
10      preceding provisions of this subsection, consideration of a  
11      resolution in the House of Representatives shall be gov-  
12      erned by the Rules of the House of Representatives appli-  
13      cable to other resolutions in similar circumstances.

14      “(f) If, before the passage by one House of a joint  
15      resolution of that House described in subsection (a), that  
16      House receives from the other House a joint resolution  
17      described in subsection (a), then the following procedures  
18      shall apply:

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

21               “(2) With respect to a joint resolution described  
22      in subsection (a) of the House receiving the joint  
23      resolution—

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

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

6           “(g) The enactment of a resolution of approval does  
7           not serve as a grant of statutory authority by Congress  
8           for a rule and does not cure any procedural defect in the  
9           making of a rule.

10          “(h) This section and section 803 are enacted by  
11          Congress—

12           “(1) as an exercise of the rulemaking power of  
13           the Senate and House of Representatives, respec-  
14           tively, and as such it is deemed a part of the rules  
15           of each House, respectively, but applicable only with  
16           respect to the procedure to be followed in that  
17           House in the case of a joint resolution described in  
18           subsection (a), and it supersedes other rules only to  
19           the extent that it is inconsistent with such rules; and

20           “(2) with full recognition of the constitutional  
21           right of either House to change the rules (so far as  
22           relating to the procedure of that House) at any time,  
23           in the same manner, and to the same extent as in  
24           the case of any other rule of that House.

1 **“§ 803. Congressional disapproval procedure for**  
2 **nonmajor rules**

3 “(a) For purposes of this section, the term ‘joint res-  
4 olution’ means only a joint resolution introduced in the  
5 period beginning on the date on which the report referred  
6 to in section 801(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 blank  
13 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 submis-  
18 sion or publication date means the later of the date on  
19 which—

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

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

24 “(c) In the Senate, if the committee to which is re-  
25 ferred a joint resolution described in subsection (a) has  
26 not reported such joint resolution (or an identical joint

1 resolution) at the end of 15 session days after the date  
2 of introduction of the joint resolution, such committee may  
3 be discharged from further consideration of such joint res-  
4 olution upon a petition supported in writing by 30 Mem-  
5 bers of the Senate, and such joint resolution shall be  
6 placed on the calendar.

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

24       “(2) In the Senate, debate on the joint resolution,  
25 and on all debatable motions and appeals in connection

1 therewith, shall be limited to not more than 10 hours,  
 2 which shall be divided equally between those favoring and  
 3 those opposing the joint resolution. A motion to further  
 4 limit debate is in order and not debatable. An amendment  
 5 to, or a motion to postpone, or a motion to proceed to  
 6 the consideration of other business, or a motion to recom-  
 7 mit 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 Senate the procedure specified in sub-  
 19 section (c) or (d) shall not apply to the consideration of  
 20 a joint resolution respecting a nonmajor rule—

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

24               “(2) if the report under section 801(a)(1)(A)  
 25       was submitted during the period referred to in sec-



1       tion 801(d)(1), after the expiration of the 60 session  
 2       days beginning on the 15th session day after the  
 3       succeeding session of Congress first convenes.

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

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

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

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

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

19       **“§ 804. Definitions**

20       “For purposes of this chapter—

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

23               “(2) The term ‘major rule’ means any rule that  
 24       the Administrator of the Office of Information and  
 25       Regulatory Affairs of the Office of Management and

1 Budget finds has resulted in or is likely to result  
2 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, except that such term does  
18 not include—

19 “(A) any rule of particular applicability,  
20 including 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, pro-  
4           cedure, or practice that does not substantially  
5           affect the rights or obligations of non-agency  
6           parties.

7   **“§ 805. Judicial review**

8           “‘No determination, finding, action, or omission under  
9           this chapter shall be subject to judicial review.

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.”.

○