

111TH CONGRESS  
1ST SESSION

# H. R. 3765

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 HOUSE OF REPRESENTATIVES

OCTOBER 8, 2009

Mr. DAVIS of Kentucky (for himself, Mrs. CAPITO, Mr. PRICE of Georgia, Mrs. BLACKBURN, Mr. PAUL, Mr. PENCE, Mr. BOUSTANY, Mr. ROGERS of Michigan, Mr. DUNCAN, Mr. ROGERS of Kentucky, Mr. BURTON of Indiana, Mr. COBLE, Mr. BOEHNER, Mr. THORNBERRY, Mr. GOHMERT, Mr. REICHERT, Mr. ROSKAM, Mr. NUNES, Mr. HELLER, Mr. HERGER, Mr. TIBERI, Ms. GINNY BROWN-WAITE of Florida, Mr. BRADY of Texas, Mrs. McMORRIS RODGERS, Mr. CANTOR, Mr. MCCARTHY of California, Mr. KLINE of Minnesota, Mr. PITTS, Mr. WOLF, Mr. CAMP, Mr. MCHENRY, Mr. SESSIONS, Mr. SHIMKUS, Mr. BARRETT of South Carolina, Mr. BONNER, Mr. BROWN of South Carolina, Mr. SHADEGG, Mr. CULBERSON, Mr. CONAWAY, Mr. UPTON, Mr. ROGERS of Alabama, Mr. REHBERG, Mr. CASSIDY, Mr. MORAN of Kansas, Mr. SMITH of Texas, Mr. MCKEON, Mr. AKIN, and Mr. POSEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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 2009”.

6 **SEC. 2. FINDINGS.**

7        Congress finds that—

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

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

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

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

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

1           (6) the drafters of Federal rules are not ac-  
2           countable directly to the people of the United States  
3           through regular elections;

4           (7) during calendar year 2008, the Government  
5           Accountability Office received a total of 3,006 final  
6           rules, including 94 major rules;

7           (8) the current executive rule review process  
8           provided for in the provision of law commonly known  
9           as the Congressional Review Act has only been exer-  
10          cised by Congress once since its enactment in 1996  
11          to reject a rule;

12          (9) delegation of congressional powers to the  
13          executive branch and its agencies augments the  
14          power of the executive branch and fails to require  
15          that sitting members of Congress are accountable  
16          for finalized rules; and

17          (10) Congress must exercise greater account-  
18          ability for its delegation of constitutional authority  
19          and the impact that such delegation has on the peo-  
20          ple, businesses, and State and local governments of  
21          the United States.

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

24          Chapter 8 of title 5, United States Code, is amended  
25          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, including whether it is a major rule; and

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

12           “(B) On the date of the submission of the report  
13 under subparagraph (A), the Federal agency promulgating  
14 the rule shall submit to the Comptroller General and make  
15 available to each House of Congress—

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

18                   “(ii) the agency’s actions relevant to sections  
19 603, 604, 605, 607, and 609;

1           “(iii) the agency’s actions relevant to sections  
2           202, 203, 204, and 205 of the Unfunded Mandates  
3           Reform Act of 1995; and

4           “(iv) any other relevant information or require-  
5           ments under any other Act and any relevant Execu-  
6           tive orders.

7           “(C) Upon receipt of a report submitted under sub-  
8           paragraph (A), each House shall provide copies of the re-  
9           port to the chairman and ranking member of each stand-  
10          ing committee with jurisdiction under the rules of the  
11          House of Representatives or the Senate to report a bill  
12          to amend the provision of law under which the rule is  
13          issued.

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

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

24          “(3) A major rule relating to a report submitted  
25          under paragraph (1) shall take effect immediately or as

1 provided for in the rule, whichever is later, if a joint reso-  
2 lution of approval described in section 802 becomes law.

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

6 “(5) If a joint resolution of approval relating to a  
7 major rule is not enacted within the period provided in  
8 subsection (b)(2), then a joint resolution of approval relat-  
9 ing to the same or a substantially similar rule may be con-  
10 sidered under this chapter in the same Congress by either  
11 the House of Representatives or the Senate.

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

15 “(2) If a joint resolution described in subsection (a)  
16 is not enacted into law by the end of 90 session days or  
17 legislative days, as applicable, beginning after the date  
18 such resolution is introduced, then the rule described in  
19 that resolution shall be deemed not to be approved and  
20 such rule shall not take effect.

21 “(c)(1) Notwithstanding any other provision of this  
22 section (except subject to paragraph (3)), a major rule  
23 may take effect for one 90-calendar-day period if the  
24 President makes a determination under paragraph (2) and

1 submits written notice of such determination to the Con-  
2 gress.

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

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

8 “(B) necessary for the enforcement of criminal  
9 laws;

10 “(C) necessary for national security; or

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

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

16 “(d)(1) In addition to the opportunity for review oth-  
17 erwise provided under this chapter, in the case of any rule  
18 other than a major rule for which a report was submitted  
19 in accordance with subsection (a)(1)(A) during the period  
20 beginning on the date occurring—

21 “(A) in the case of the Senate, 60 session days,  
22 or

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

1 before the date the Congress adjourns a session of Con-  
2 gress through the date on which the same or succeeding  
3 Congress first convenes its next session, section 803 shall  
4 apply to such rule in the succeeding session of Congress.

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

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

10 “(I) in the case of the Senate, the 15th  
11 session day, or

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

14 after the succeeding session of Congress first con-  
15 venes; and

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

18 “(B) Nothing in this paragraph shall be construed  
19 to affect the requirement under subsection (a)(1) that a  
20 report shall be submitted to Congress before a rule can  
21 take effect.

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

1 **“§ 802. Congressional approval procedure for major**  
2 **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 (exclud-  
7 ing days either House of Congress is adjourned for more  
8 than 3 days during a session of Congress), the matter  
9 after the resolving clause of which is as follows: ‘That Con-  
10 gress approves the rule submitted by the \_\_\_ \_\_\_ relating  
11 to \_\_\_ \_\_\_.’ (The blank spaces being appropriately filled in).

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

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

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

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

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

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

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

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

13 “(e)(1) In the House of Representatives, if the com-  
14 mittee or committees to which a joint resolution described  
15 in subsection (a) has been referred have not reported it  
16 at the end of 15 legislative days after its introduction,  
17 such committee shall be automatically discharged from  
18 further consideration of the resolution and it shall be  
19 placed on the appropriate calendar. A vote on final pas-  
20 sage of the resolution shall be taken on or before the close  
21 of the 15th legislative day after the resolution is reported  
22 by the committee to which it was referred, or after such  
23 committee has been discharged from further consideration  
24 of the resolution.

1           “(2)(A) A motion in the House of Representatives to  
2 proceed to the consideration of a resolution shall be highly  
3 privileged and not debatable. An amendment to the motion  
4 shall not be in order, nor shall it be in order to move to  
5 reconsider the vote by which the motion is agreed to or  
6 disagreed to.

7           “(B) Debate in the House of Representatives on a  
8 resolution shall be limited to not more than two hours,  
9 which shall be divided equally between those favoring and  
10 those opposing the resolution. A motion to further limit  
11 debate shall not be debatable. No amendment to, or mo-  
12 tion to recommit, the resolution shall be in order. It shall  
13 not be in order to reconsider the vote by which a resolution  
14 is agreed to or disagreed to.

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

19           “(D) All appeals from the decisions of the Chair re-  
20 lating to the application of the Rules of the House of Rep-  
21 resentatives to the procedure relating to a resolution shall  
22 be decided without debate.

23           “(E) Except to the extent specifically provided in the  
24 preceding provisions of this subsection, consideration of a  
25 resolution in the House of Representatives shall be gov-

1 igned by the Rules of the House of Representatives appli-  
2 cable to other resolutions in similar circumstances.

3 “(f) If, before the passage by one House of a joint  
4 resolution 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 “(g) The enactment of a resolution of approval does  
19 not serve as a grant of statutory authority by Congress  
20 for a rule and does not cure any procedural defect in the  
21 making of a rule.

22 “(h) This section and section 803 are enacted by  
23 Congress—

24 “(1) as an exercise of the rulemaking power of  
25 the Senate and House of Representatives, respec-

1 tively, and as such it is deemed a part of the rules  
2 of each House, respectively, but applicable only with  
3 respect to the procedure to be followed in that  
4 House in the case of a joint resolution described in  
5 subsection (a), and it supersedes other rules only to  
6 the extent that it is inconsistent with such rules; and  
7 “(2) with full recognition of the constitutional  
8 right of either House to change the rules (so far as  
9 relating to the procedure of that House) at any time,  
10 in the same manner, and to the same extent as in  
11 the case of any other rule of that House.

12 **“§ 803. Congressional disapproval procedure for**  
13 **nonmajor 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 and  
18 ending 60 days thereafter (excluding days either House  
19 of Congress is adjourned for more than 3 days during a  
20 session of Congress), the matter after the resolving clause  
21 of which is as follows: ‘That Congress disapproves the  
22 nonmajor rule submitted by the \_\_\_ \_\_\_ relating to \_\_\_ \_\_,  
23 and such rule shall have no force or effect.’ (The blank  
24 spaces being appropriately filled in).

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

4 “(2) For purposes of this section, the term submis-  
5 sion or publication date means the later of the date on  
6 which—

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

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

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

20 “(d)(1) In the Senate, when the committee to which  
21 a joint resolution is referred has reported, or when a com-  
22 mittee is discharged (under subsection (c)) from further  
23 consideration of a joint resolution described in subsection  
24 (a), it is at any time thereafter in order (even though a  
25 previous motion to the same effect has been disagreed to)

1 for a motion to proceed to the consideration of the joint  
2 resolution, and all points of order against the joint resolu-  
3 tion (and against consideration of the joint resolution) are  
4 waived. The motion is not subject to amendment, or to  
5 a motion to postpone, or to a motion to proceed to the  
6 consideration of other business. A motion to reconsider the  
7 vote by which the motion is agreed to or disagreed to shall  
8 not be in order. If a motion to proceed to the consideration  
9 of the joint resolution is agreed to, the joint resolution  
10 shall remain the unfinished business of the Senate until  
11 disposed of.

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

21       “(3) In the Senate, immediately following the conclu-  
22 sion of the debate on a joint resolution described in sub-  
23 section (a), and a single quorum call at the conclusion of  
24 the debate if requested in accordance with the rules of the

1 Senate, the vote on final passage of the joint resolution  
2 shall occur.

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

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

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

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

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

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

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

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

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

9   **“§ 804. Definitions**

10           “For purposes of this chapter—

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

13                   “(2) The term ‘major rule’ means any rule that  
14           the Administrator of the Office of Information and  
15           Regulatory Affairs of the Office of Management and  
16           Budget finds has resulted in or is likely to result  
17           in—

18                           “(A) an annual effect on the economy of  
19           \$100,000,000 or more;

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

24                           “(C) significant adverse effects on competi-  
25           tion, employment, investment, productivity, in-

1           novation, or on the ability of United States-  
2           based enterprises to compete with foreign-based  
3           enterprises in domestic and export markets.

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

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

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

16                   “(B) any rule relating to agency manage-  
17           ment or personnel; or

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

22   **“§ 805. Judicial review**

23           “No determination, finding, action, or omission under  
24   this chapter shall be subject to judicial review.

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

2 “Nothing in this chapter shall apply to rules that con-  
3 cern monetary policy proposed or implemented by the  
4 Board of Governors of the Federal Reserve System or the  
5 Federal Open Market Committee.

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

7 “Notwithstanding section 801—

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

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

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

○