

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 6333

To amend chapter 8 of title 5, United States Code, to provide for Congressional oversight of agency rulemaking, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2012

Mr. KING of Iowa 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 for Congressional oversight of agency rulemaking, and for other purposes.

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 “Sunset Act of 2012”.

5 **SEC. 2. CONGRESSIONAL REVIEW OF AGENCY RULE-**  
6 **MAKING.**

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

1    **“CHAPTER 8—CONGRESSIONAL REVIEW**  
2                   **OF AGENCY RULEMAKING**

- “801. Congressional review.
- “802. Congressional approval procedure for rules.
- “803. Definitions.
- “804. Judicial review.
- “805. Exemption for monetary policy.
- “806. Review of rules currently in effect.
- “807. Sunset for rules.

3    **“§ 801. Congressional review**

4           “(a)(1)(A) Beginning on the date that is 3 months  
5 after the date of enactment of this section and every 3  
6 months thereafter, each agency shall submit to each  
7 House of the Congress and to the Comptroller General a  
8 report including each rule made by that agency during  
9 that 3 month period, containing—

10                   “(i) a copy of each such rule;

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

13                   “(iii) a list of any other related regulatory ac-  
14 tions intended to implement the same statutory pro-  
15 vision or regulatory objective as well as the indi-  
16 vidual and aggregate economic effects of those ac-  
17 tions; and

18                   “(iv) the proposed effective date of the rule.

19           “(B) No rule may take effect before the submission  
20 of a report under subparagraph (A) that includes that  
21 rule.

1       “(C) On the date of the submission of the report  
2 under subparagraph (A), the Federal agency promulgating  
3 each rule included in the report shall submit to the Comp-  
4 troller General and make available to each House of Con-  
5 gress—

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

8           “(ii) the agency’s actions pursuant to title 5 of  
9 the United States Code, sections 603, 604, 605,  
10 607, and 609;

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

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

17       “(D) 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 each rule in-  
23 cluded in the report is issued.

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

1 end of 15 calendar days after the submission or publica-  
2 tion date as provided in section 802(b)(2). The report of  
3 the Comptroller General shall include an assessment of the  
4 agency's compliance with procedural steps required by  
5 paragraph (1)(C).

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

9 “(3) A rule included in a report submitted under  
10 paragraph (1) shall take effect upon enactment of a joint  
11 resolution of approval described in section 802 or as pro-  
12 vided for in the rule following enactment of a joint resolu-  
13 tion of approval described in section 802, whichever is  
14 later.

15 “(4) If a joint resolution of approval relating to a  
16 rule is not enacted within the period provided in sub-  
17 section (b)(2), then a joint resolution of approval relating  
18 to the same rule may not be considered under this chapter  
19 in the same Congress by either the House of Representa-  
20 tives or the Senate.

21 “(b)(1) A rule shall not take effect unless the Con-  
22 gress enacts a joint resolution of approval described under  
23 section 802.

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

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

8       “(3) Such a rule may not be reissued in substantially  
9 the same form, and a new rule that is substantially the  
10 same as such a rule may not be issued, unless the reissued  
11 or new rule is specifically authorized by a law enacted  
12 after the date described in this subsection.

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

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

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

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

25               “(C) necessary for national security; or

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

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

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

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

13           “(B) in the case of the House of Representa-  
14          tives, 60 legislative days,  
15          before the date the Congress is scheduled to adjourn a  
16          session of Congress through the date on which the same  
17          or succeeding Congress first convenes its next session, sec-  
18          tion 802 shall apply to such rule in the succeeding session  
19          of Congress.

20           “(2)(A) In applying section 802 for purposes of such  
21          additional review, a rule described under paragraph (1)  
22          shall be treated as though—

23           “(i) such rule were published in the Federal  
24          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 rules**

17          “(a) For purposes of this section, the term ‘joint res-  
18          olution’ means only a joint resolution introduced on or  
19          after the date on which the report referred to in section  
20          801(a)(1)(A) is received by Congress (excluding days ei-  
21          ther House of Congress is adjourned for more than 3 days  
22          during a session of Congress), the matter after the resolv-  
23          ing clause of which is as follows: ‘That Congress approves  
24          the rules submitted by the \_\_\_\_ relating to \_\_\_\_.’ (The  
25          blank spaces being appropriately filled in).

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. It shall be in order  
9 to consider any amendment that provides for specific con-  
10 ditions on which the approval of a particular rule included  
11 in the joint resolution is contingent.

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. Amendments to the resolu-  
21 tion shall be in order. No motion to recommit the resolu-  
22 tion shall be in order. It shall be in order to consider any  
23 amendment that provides for specific conditions on which  
24 the approval of a particular rule included in the joint reso-  
25 lution is contingent.

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

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

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

21      “(g) This section is enacted by Congress—

22             “(1) as an exercise of the rulemaking power of  
23             the Senate and House of Representatives, respec-  
24             tively, and as such it is deemed a part of the rules  
25             of each House, respectively, but applicable only with

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

10 **“§ 803. Definitions**

11       “For purposes of this chapter—

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

14       “(2) 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   **“§ 804. Judicial review**

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

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

12   **“§ 805. Exemption for monetary policy**

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

17   **“§ 806. Review of rules currently in effect**

18          “(a) ANNUAL REVIEW.—Beginning on the date that  
19          is 6 months after the date of enactment of this section  
20          and annually thereafter for the 9 years following, each  
21          agency shall designate not less than 10 percent of eligible  
22          rules made by that agency for review, and shall submit  
23          a report including each such eligible rule in the same man-  
24          ner as a report under section 801(a)(1). Section 801 and  
25          section 802 shall apply to each such rule, subject to sub-

1 section (c) of this section. No eligible rule previously des-  
2 ignated may be designated again.

3 “(b) SUNSET FOR ELIGIBLE RULES NOT EX-  
4 TENDED.—Beginning after the date that is 10 years after  
5 the date of enactment of this section, if Congress has not  
6 enacted a joint resolution of approval for that eligible rule,  
7 that eligible rule shall not continue in effect.

8 “(c) CONSOLIDATION; SEVERABILITY.—In applying  
9 sections 801 and 802 to eligible rules under this section,  
10 the following shall apply:

11 “(1) The words ‘take effect’ shall be read as  
12 ‘continue in effect’.

13 “(2) Except as provided in paragraph (3), a  
14 single joint resolution of approval shall apply to all  
15 eligible rules in a report designated for a year, and  
16 the matter after the resolving clause of that joint  
17 resolution is as follows: ‘That Congress approves the  
18 rules submitted by the \_\_\_\_ for the year \_\_\_\_.’ (The  
19 blank spaces being appropriately filled in).

20 “(3) It shall be in order to consider any amend-  
21 ment that provides for specific conditions on which  
22 the approval of a particular eligible rule included in  
23 the joint resolution is contingent.

1           “(4) A member of either House may move that  
2           a separate joint resolution be required for a specified  
3           rule.

4           “(d) DEFINITION.—In this section, the term ‘eligible  
5           rule’ means a rule that is in effect as of the date of enact-  
6           ment of this section.

7           **“§ 807. Sunset for rules**

8           “(a) EXPIRATION OF RULE.—

9           “(1) IN GENERAL.—Except as provided in this  
10          section, each rule made by an agency shall cease to  
11          have effect—

12                 “(A) beginning on the date that is 10  
13                 years after the date of enactment of a joint res-  
14                 olution of approval with regard to the rule; or

15                 “(B) if a joint resolution of extension de-  
16                 scribed in subsection (d) has been enacted with  
17                 regard to the rule, beginning on the date that  
18                 is 10 years after the date of enactment of the  
19                 most recently enacted such joint resolution.

20           “(2) REISSUANCE OF THE RULE PROHIB-  
21          ITED.—The rule may not be reissued in substan-  
22          tially the same form, and a new rule that is substan-  
23          tially the same as such a rule may not be issued, un-  
24          less the reissued or new rule is specifically author-

1        ized by a law enacted after the date described in this  
2        subsection (a).

3        “(b) REPORT BY AGENCY.—Not later than 180 days  
4 before the date described in subsection (a), the agency  
5 shall submit a report similar to the report described in  
6 801(a)(1)(A) to each House of Congress and to the Comp-  
7 troller General, except that instead of the proposed effec-  
8 tive date, such report shall contain the date described in  
9 subsection (a).

10       “(c) EXEMPTION BY PRESIDENT.—The President  
11 may by Executive order exempt a rule from the application  
12 of subsection (a) for a period of not more than 10 years  
13 if the President determines, and submits to Congress writ-  
14 ten notice of such determination, that such rule is—

15            “(1) necessary because of an imminent threat  
16 to health or safety or other emergency;

17            “(2) necessary for the enforcement of criminal  
18 laws;

19            “(3) necessary for national security; or

20            “(4) issued pursuant to any statute imple-  
21 menting an international trade agreement.

22        “(d) JOINT RESOLUTION OF EXTENSION.—

23            “(1) JOINT RESOLUTION DESCRIBED.—For  
24 purposes of this section, the term ‘joint resolution’  
25 means only a joint resolution introduced on or after

1 the date on which the report referred to subsection  
2 (b) is received by Congress (excluding days either  
3 House of Congress is adjourned for more than 3  
4 days during a session of Congress), the matter after  
5 the resolving clause of which is as follows: ‘That  
6 Congress extends the rule submitted by the \_\_\_ \_\_\_  
7 relating to \_\_\_ \_\_.’ (The blank spaces being appro-  
8 priately filled in). The following shall apply to such  
9 a joint resolution:

10 “(A) In the House, the majority leader of  
11 the House of Representatives (or his designee)  
12 and the minority leader of the House of Rep-  
13 resentatives (or his designee) shall introduce  
14 such joint resolution (by request), within 3 leg-  
15 islative days after Congress receives the report  
16 submitted under subsection (b).

17 “(B) In the Senate, the majority leader of  
18 the Senate (or his designee) and the minority  
19 leader of the Senate (or his designee) shall in-  
20 troduce such joint resolution described in sub-  
21 section (a) (by request), within 3 session days  
22 after Congress receives the report submitted  
23 under subsection (b).

24 “(2) CONSIDERATION OF JOINT RESOLUTION.—

25 Subsections (b) through (g) of section 802 shall

1       apply to a joint resolution described in paragraph  
2       (1) of this subsection in the same manner as a joint  
3       resolution described in subsection (a) of section 802,  
4       except that for purposes of that subsection, the term  
5       ‘submission date’ means the date on which the Con-  
6       gress receives the report submitted under subsection  
7       (b).”.

○