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113TH CONGRESS
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H. R. 367

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 9, 2013

Received; read twice and referred to the Committee on Homeland Security and Governmental Affairs

AN ACT

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Regulations From the Executive in Need of Scrutiny Act of 2013''.

SEC. 2. PURPOSE.

The purpose of this Act is to increase accountability for and transparency in the Federal regulatory process. Section 1 of article I of the United States Constitution grants all legislative powers to Congress. Over time, Congress has excessively delegated its constitutional charge while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes. By requiring a vote in Congress, the REINS Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the American people for the laws imposed upon them. Moreover, as a tax on carbon emissions increases energy costs on consumers, reduces economic growth and is therefore detrimental to individuals, families and businesses, the REINS Act includes in the definition of a major rule, any rule that implements or provides for the imposition or collection of a tax on carbon emissions.

SEC. 3. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

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

"CHAPTER 8—CONGRESSIONAL REVIEW 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.

"§ 801. Congressional review

''(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule;

''(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the classification specifically addressing each criteria for a major rule contained within clauses (i) through (iii) of section 804(2)(A) or within section 804(2)(B);

''(iv) a list of any other related regulatory actions taken by or that will be taken by the Federal agency promulgating the rule that are intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions;

''(v) a list of any other related regulatory actions taken by or that will be taken by any other Federal agency with authority to implement the same statutory provision or regulatory objective that are intended to implement such provision or objective, of which the Federal agency promulgating the rule is aware, as well as the individual and aggregate economic effects of those actions; and

''(vi) the proposed effective date of the rule.

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

''(i) a complete copy of the cost-benefit analysis of the rule, if any, including an analysis of any jobs added or lost, differentiating between public and private sector jobs;

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

''(iii) the agency's actions pursuant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders.

''(C) Upon receipt of a report submitted under subparagraph (A), each House shall provide copies of the report to the chairman and ranking member of each standing committee with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

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

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

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

''(4) A nonmajor rule shall take effect as provided by section 803 after submission to Congress under paragraph (1).

''(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either the House of Representatives or the Senate.

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

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

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

submits written notice of such determination to the Congress.

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

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

''(B) necessary for the enforcement of criminal laws;

''(C) necessary for national security; or

''(D) issued pursuant to any statute implementing an international trade agreement.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

''(A) in the case of the Senate, 60 session days, or

''(B) in the case of the House of Representatives, 60 legislative days,

before the date the Congress is scheduled to adjourn a session of Congress through the date on which the same or succeeding Congress first convenes its next session, sections 802 and 803 shall apply to such rule in the succeeding session of Congress.

''(2)(A) In applying sections 802 and 803 for purposes of such additional review, a rule described under paragraph (1) shall be treated as though—

''(i) such rule were published in the Federal Register on—

''(I) in the case of the Senate, the 15th session day, or

''(II) in the case of the House of Representatives, the 15th legislative day,

after the succeeding session of Congress first convenes; and

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

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

''(3) A rule described under paragraph (1) shall take effect as otherwise provided by law (including other subsections of this section).

"§ 802. Congressional approval procedure for major rules

''(a)(1) For purposes of this section, the term 'joint resolution' means only a joint resolution addressing a report classifying a rule as major pursuant to section 801(a)(1)(A)(iii) that—

''(A) bears no preamble;

''(B) bears the following title (with blanks filled as appropriate): 'Approving the rule submitted by _____ relating to _____.';

''(C) includes after its resolving clause only the following (with blanks filled as appropriate): 'That Congress approves the rule submitted by _____ relating to _____.'; and

''(D) is introduced pursuant to paragraph (2).

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

''(A) in the case of the House of Representatives, within three legislative days; and

''(B) in the case of the Senate, within three session days.

''(3) A joint resolution described in paragraph (1) shall not be subject to amendment at any stage of proceeding.

''(b) A joint resolution described in subsection (a) shall be referred in each House of Congress to the committees having jurisdiction over the provision of law under which the rule is issued.

''(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

''(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion

to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

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

''(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the

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

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

''(e) In the House of Representatives, if any committee to which a joint resolution described in subsection (a) has been referred has not reported it to the House at the end of 15 legislative days after its introduction, such committee shall be discharged from further consideration of the joint resolution, and it shall be placed on the appropriate calendar. On the second and fourth Thursdays of each month it shall be in order at any time for the Speaker to recognize a Member who favors passage of a joint resolution that has appeared on the calendar for at least 5 legislative days to call up that joint resolution for immediate consideration in the House without intervention of any point of order. When so called up a joint resolution shall be considered as read and shall be debatable for 1 hour equally divided and controlled by the proponent and an opponent, and the previous question shall be considered as ordered to its passage without intervening motion. It shall not be in order to reconsider the vote on passage. If a vote on final passage of the joint resolution has not

been taken by the third Thursday on which the Speaker may recognize a Member under this subsection, such vote shall be taken on that day.

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

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

''(B) the procedure in the receiving House shall be the same as if no joint resolution had been received from the other House until the vote on passage, when the joint resolution received from the other House shall supplant the joint resolution of the receiving House.

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

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

''(h) This section and section 803 are enacted by Congress—

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

tively, and as such is deemed to be part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a) and superseding other rules only where explicitly so; and

''(2) with full recognition of the Constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

''§ 803. Congressional disapproval procedure for nonmajor rules

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

''(b) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

''(c) In the Senate, if the committee to which is referred a joint resolution described in subsection (a) has not reported such joint resolution (or an identical joint resolution) at the end of 15 session days after the date of introduction of the joint resolution, such committee may be discharged from further consideration of such joint resolution upon a petition supported in writing by 30 Members of the Senate, and such joint resolution shall be placed on the calendar.

''(d)(1) In the Senate, when the committee to which a joint resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall

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

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

''(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

''(e) In the Senate the procedure specified in subsection (c) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—

''(1) after the expiration of the 60 session days beginning with the applicable submission or publication date, or

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

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

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

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

''(A) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

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

"§ 804. Definitions

"For purposes of this chapter—

"(1) The term 'Federal agency' means any agency as that term is defined in section 551(1).

"(2) The term 'major rule' means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds—

"(A) has resulted in or is likely to result in—

"(i) an annual effect on the economy of $50,000,000 or more;

"(ii) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

"(iii) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

"(B) is made by the Administrator of the Environmental Protection Agency and that would have a significant impact on a substantial number of agricultural entities, as determined by the Secretary of Agriculture (who shall publish such determination in the Federal Register);

"(C) is a rule that implements or provides for the imposition or collection of a carbon tax; or

"(D) is made under the Patient Protection and Affordable Care Act (Public Law 111–148).

"(3) The term 'nonmajor rule' means any rule that is not a major rule.

"(4) The term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefore, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing.

''(5) The term 'submission date or publication date', except as otherwise provided in this chapter, means—

''(A) in the case of a major rule, the date on which the Congress receives the report submitted under section 801(a)(1); and

''(B) in the case of a nonmajor rule, the later of—

''(i) the date on which the Congress receives the report submitted under section 801(a)(1); and

''(ii) the date on which the nonmajor rule is published in the Federal Register, if so published.

''(6) The term 'agricultural entity' means any entity involved in or related to agricultural enterprise, including enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

''(7) The term 'carbon tax' means a fee, levy, or price on—

''(A) emissions, including carbon dioxide emissions generated by the burning of coal, natural gas, or oil; or

''(B) coal, natural gas, or oil based on emissions, including carbon dioxide emissions that would be generated through the fuel's combustion.

"§ 805. Judicial review

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

''(b) Notwithstanding subsection (a), a court may determine whether a Federal agency has completed the necessary requirements under this chapter for a rule to take effect.

''(c) The enactment of a joint resolution of approval under section 802 shall not be interpreted to serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, shall not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule except for purposes of determining whether or not the rule is in effect.

"§ 806. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

"§ 807. Effective date of certain rules

''Notwithstanding section 801—

''(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

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

shall take effect at such time as the Federal agency promulgating the rule determines.''.

SEC. 4. BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.

Section 257(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended by adding at the end the following new subparagraph:

''(E) BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.—Any rules subject to the congressional approval procedure set forth in section 802 of chapter 8 of title 5, United States Code, affecting budget authority, outlays, or receipts shall be assumed to be effective unless it

is not approved in accordance with such section.''.

SEC. 5. GOVERNMENT ACCOUNTABILITY OFFICE STUDY OF RULES.

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

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

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

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

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to Congress that contains the findings of the study conducted under subsection (a).

Passed the House of Representatives August 2, 2013.

Attest: KAREN L. HAAS,

Clerk.