COALITION FOR SENSIBLE SAFEGUARDS

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The Regulatory Accountability Act of 2015: Legislation Would Override and Threaten Decades of Public Protections

The Regulatory Accountability Act (H.R. 185) is a drastic overhaul of the Administrative Procedure Act, a cornerstone of the U.S. legal system that has served us well for more than 60 years. The extreme Regulatory Accountability Act (RAA) is **the biggest threat to environmental standards, workplace safety rules, public health, and financial reform regulations** to appear in decades.

The RAA acts as a kind of "super-mandate," **rewriting the requirements of landmark legislation such as the Clean Air Act and the Occupational Safety and Health Act and distorting their protective focus to instead emphasize compliance costs.** The RAA imposes hearing procedures that would allow lengthy challenges to proposed rules and delay final action. Even if a proposed standard somehow manages to survive this new procedural gauntlet that adds more than 70 new requirements to the regulatory development process, the bill empowers non-expert judges to second-guess agencies on the technical analyses underlying their rulemakings, making it easier for special interests and industry to have those rules struck down.

The Regulatory Accountability Act would override decades of health, safety, and environmental laws and makes protecting the public from harm secondary to limiting costs and impacts on businesses and corporations, while neither improving nor streamlining the rulemaking process.

- The RAA would require agencies to conduct additional and often duplicative analyses, grinding the regulatory process to a halt without improving the quality of final rules. Currently, most significant rules already undergo detailed economic analyses, including formal cost-benefit analyses, many of which already run hundreds of pages and take months or even years to complete.
- Beyond unnecessarily adding more steps to the process, the RAA would dramatically change the *substance* of regulations by establishing a default rule that agencies adopt the "least costly rule" unless they can demonstrate that the benefits of a more costly rule justify the additional costs. This rulemaking super-mandate would rewrite dozens of laws by substituting corporate profits for public protections as the paramount concern of agency decision-making. The RAA would make it all but impossible to adopt a stronger standard—even one that saved hundreds of additional lives—simply because it might slightly increase the cost to businesses.
- The bill would override the Clean Air Act, the Occupational Safety and Health Act, the Mine Safety and Health Act, the Consumer Product Safety Improvement Act, the Securities Exchange

Act, and other laws that make protecting the public or workers the highest priority. The RAA's new mandate makes it nearly impossible for agencies to defend any new safeguards. Based on the federal courts' interpretation of the same requirement in the Toxic Substances Control Act (TSCA), the Environmental Protection Agency (EPA) has not been able to regulate a single toxic chemical in decades. Industry knows this. The CEO of SC Johnson, a major consumer products company, has stated that because of these requirements in TSCA, "Your child has a better chance of becoming a major baseball player than a chemical being regulated under EPA."

The Regulatory Accountability Act would require agencies to subject their largest rules to formal rulemaking hearing procedures. These procedures are so complex, time-consuming, and burdensome, that administrative law scholars across the country regard them as unworkable and obsolete.

- In one notorious example of the failure of formal rulemaking hearings, the Food and Drug Administration (FDA) sought to determine whether the peanut content of peanut butter should be 87.5 percent or 90 percent. The hearings lasted nine years and yielded nearly 8,000 pages of transcripts, resulting in a tremendous amount of the agency's scarce resources.
- The RAA would even authorize corporate interest to petition for these formal rulemaking hearings for smaller rulemakings, leading to delays and additional waste in this proceedings as well.

The Regulatory Accountability Act would force more agencies – including independent agencies such as the Securities and Exchange Commission (SEC), National Labor Relations Board (NLRB), Consumer Product Safety Commission (CPSC), and Consumer Financial Protection Bureau (CFPB) – to follow guidelines to be established by the Office of Management and Budget (OMB)/Office of Information and Regulatory Affairs (OIRA).

- This would blur the clear lines of accountability of independent agencies. Congress chooses to establish independent agencies when it believes that the policy area affected needs to be insulated from the political pressure exerted by the executive branch. In the authorizing statutes of independent agencies, Congress defines the structure, authority, and requirements an agency must meet to issue a rule; many already have requirements for cost-benefit analyses. The RAA would force all agencies to use a one-size-fits-all cost-benefit analysis process, even if that process contradicts existing laws, many of which direct agencies to focus on protecting consumer welfare, public health, safety, or the environment.

The Regulatory Accountability Act allows for unfettered challenges to agency evidence used to propose a rule.

- The bill provides anyone the opportunity to petition an agency for a public hearing to challenge whether the evidence and data used to support a regulation complies with Information Quality Act requirements. Regulated industries would flood agencies with petitions for hearings, preventing them from moving forward with rulemaking actions needed to fulfill their missions.

The Regulatory Accountability Act would further entrench OIRA interference in the rulemaking process.

- Under the bill, OIRA's role in the rulemaking process, which has been established only through executive order, would be codified and expanded. Already, many regulatory experts feel OIRA has too much power, given that it can arbitrarily reject rules that have been years in the making (as happened regularly during the George W. Bush administration and happened with the 2011 ozone rule during the Obama administration).
    - The RAA requires OIRA to establish numerous duplicative mandatory guidelines for conducting quantitative economic and risk assessments, for compliance with the Information Quality Act as well as for promoting "coordination, simplification and harmonization" of agency rules. Rules that failure to adhere to these guidelines would be more vulnerable to attack during judicial review.
    - Through these guidelines, OIRA would have the final word on how agencies develop and use science to inform their regulatory decision-making and could increase opportunities for political or industry-led interference in agency science by increasing industry control over peer review and giving oversized weight to small pieces of contrary scientific evidence.
    - The added work of complying with these guidelines—without additional staff or resources—would only lead to more unnecessary delays that would cost the country billions of dollars in additional health care and other costs, and distract agencies from their main mission: protecting the public.

The Regulatory Accountability Act empowers judges to second-guess agency experts in a highly imbalanced fashion, inviting increased litigation and higher costs to the public.

- Currently, courts are supposed to defer to the rulemaking decisions that agencies make. However, under the RAA, such deference would no longer be standard practice.
    - Regulated industries would now be able to challenge agency compliance with the host of new procedural and analytical requirements in the legislation. This would be a recipe for much more, not less, litigation challenging agencies. To take one of the most egregious examples, the RAA would require agencies to determine the" indirect costs" of many of their rules. Despite no clear definition of what constitutes an "indirect cost" in the legislation, agencies could be dragged into court and have their rules thrown out if a regulated industry can show an "indirect cost" was not considered.
    - The RAA would empower generalist, non-expert judges to review agencies' highly technical cost-benefit analyses, and even to reject rules whenever they determine that those analyses fail to comply with OIRA's one-size-fits-all cost-benefit analysis guidelines.