

**The Regulatory Accountability Act of 2013:
Legislation Would Override and Threaten Decades of Public Protections**

The innocuous-sounding Regulatory Accountability Act (RAA) is, in reality, **the biggest threat to environmental standards, workplace safety rules, public health, and financial reform regulations** to appear in decades.

The Regulatory Accountability Act (S. 1029) 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 sixty years. The RAA acts as a kind of “super-mandate,” **overriding the requirements of landmark legislation such as the Clean Air Act and the Occupational Safety and Health Act and distorting their protective focus.** The RAA imposes hearing procedures that would allow countless challenges to proposed rules and delay final action. Even if a proposed standard somehow manages to survive this new procedural gauntlet, the bill alters the judicial review standard for most rules, making it easier for special interests and industry to have a rule struck down.

The Regulatory Accountability Act overrides 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,

- Currently most significant rules 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. The RAA requires agencies to conduct additional and often duplicative analyses, grinding the regulatory process to a halt.
- Beyond unnecessarily adding more 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 bear the burden of demonstrating 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 cost businesses a few more bucks.
- 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), 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 the requirements in TSCA (which are included in this bill), “Your child has a better chance of becoming a major baseball player than a chemical being regulated under EPA.”

The Regulatory Accountability Act would force more agencies – including independent agencies like 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 judges that the policy area affected needs to be insulated from the political pressures associated with being part of 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 the considerations that are most relevant to their area of jurisdiction.

The Regulatory Accountability Act establishes a novel two-year expiration date on all rule-makings.

- The RAA establishes a novel two-year expiration date, with a possible one-year extension by the agency, on all notices of proposed rulemaking. This requirement would further incentivize regulated industry-led delay of the rulemaking process so that an agency's proposed rule "blows up" before the agency can finalize it. Industry knows that it could kill any new standard simply by "running out the two-year clock." The significant increase in procedural and analytical requirements that this bill creates, without any commensurate funding, will make it even easier for regulated industries to abuse this expiration date. In sum, it gives regulated industries a very powerful strategic tool for blocking any rules they oppose.

The Regulatory Accountability Act establishes a petition process for retrospective review of rules

- The bill requires agencies to solicit, on an ongoing basis, public petitions for retrospective review of existing rules for the purpose of modifying or repealing them. Regulated industries will flood agencies with such petitions, preventing them from moving forward with new 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 granted 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 under the Bush administration and happened with the recent ozone rule under the Obama administration).
 - The RAA requires OIRA to establish mandatory guidelines for conducting quantitative and qualitative assessments, issuing major guidance, and conducting risk assessments that include "criteria for selecting studies and models, evaluating and weighing evidence, and conducting peer reviews." The OIRA guidelines and agency adherence to them could be subjected to judicial review.
 - Through these guidelines, OIRA will 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 expands judicial review of rulemaking in a highly imbalanced fashion, inviting increased litigation, higher costs to the public, and judicial interference in the rulemaking process.

- Currently, courts are supposed to defer to the rulemaking decisions that agencies make. However, under the RAA, such deference will no longer be standard practice.
 - Regulated industries will now be able to challenge agency compliance with the host of new procedural and analytical requirements in the legislation. This will be a recipe for much more, not less, litigation challenging agencies. To take one of the most egregious examples, agencies are required to determine the "indirect costs" of their major or high-impact rules under the RAA. Despite no clear definition of what constitutes an "indirect cost" in the legislation, agencies can be dragged into court and have their rules thrown out if a regulated industry can show an "indirect cost" was not considered.
 - For high-impact rules--those that often provide the greatest benefits to the public in terms of health, safety, and economic security--courts must employ a substantial evidence standard of review, which affords significantly less deference to agencies than the existing standard. In a recent report, GAO pointed to the substantial evidence standard as one of the central reasons that "the process for setting workplace safety standards at OSHA is broken."¹
 - 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.

¹ <http://www.help.senate.gov/newsroom/press/release/?id=c114516a-428b-48dd-a3c1-2b75f3ccb93b>