



December 7, 2023

Dear Representative:

The Coalition for Sensible Safeguards (CSS), an alliance of over 180 labor, scientific, research, good government, faith, community, health, environmental, and public interest groups, and the undersigned allied organizations strongly oppose **the Ensuring Accountability in Agency Rulemaking Act, H.R. 357**.

The Ensuring Accountability in Agency Rulemaking Act would codify Executive Order 13979, entitled “Ensuring Democratic Accountability in Agency Rulemaking,” which was issued by former President Donald Trump in his very last days in office and was repealed by President Joe Biden. It will add unnecessary ambiguity and considerable delay in the creation, promulgation, and implementation of critical new public health and safety safeguards, financial reforms, and worker protections – making industry even less accountable to the public. These consequences are particularly objectionable because the bill purports to “solve” a problem that does not actually exist. Rather than advance good government reform, this bill demonizes our public protection agencies and promotes a harmful anti-regulatory narrative.

The Ensuring Accountability in Agency Rulemaking Act provides that “any rule promulgated under section 553 of Title 5, United States Code, shall be issued and signed by an individual appointed by the President, by and with the advice and consent of the Senate.” Yet, under the Constitution’s appointments clause, agency rulemakings are authorized by “principal” officers who are Senate confirmed, and in practice, this often occurs through necessary delegation. Currently, senior agency appointees sometimes delegate the routine task of signing a rulemaking to subordinates as an efficiency measure. Senior agency appointees ratify the signing of the rulemaking after the fact to comply with this clause.

Given the expense and legal consequences involved, no agency would ever issue a rule without authorization from a relevant agency leader. At best, this bill would serve to create needless bureaucratic hurdles for agency officials, rather than correct any real problem of public accountability.

The bill further requires that all rules “shall be initiated by a senior appointee” but does not define what “initiated” means. Since the Administrative Procedure Act does not define this term, this will create uncertainty that could thwart rulemaking.

For example, what action qualifies as “initiating” a rule under this bill? Is it when a rule is proposed? Is it when it is assigned a Regulatory Identification Number (RIN)? Would the

granting of a citizen petition for rulemaking satisfy this requirement? The bill is silent on this important detail. Yet, these are significant steps in the rulemaking process, and none of these would take place without approval of the Senate-confirmed official.

In the worst case, the uncertainty due to this provision could stifle the effective functioning of agencies. Drawing on their unique experience and expertise, rank-and-file staff at agencies often provide the inspiration for an idea that eventually becomes a rule. Indeed, senior agency officials rely on career staff for these innovations. This bill risks creating a disincentive for career staff at agencies to propose innovative solutions to the problems the agency was created to address. Significantly, many of these solutions could even be the kind that achieve regulatory objectives at lower compliance costs for regulated businesses.

Congress should be searching for ways to ensure that federal agencies are able to enforce laws designed to protect our safety, air quality, water, food, financial security, and much more, not putting up roadblocks to sensible safeguards that protect the American people.

For these reasons, **we strongly urge you to oppose the Ensuring Accountability in Agency Rulemaking Act.**

Sincerely,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Rachel Weintraub
Executive Director
Coalition for Sensible Safeguards