



June 28, 2023

Re: Vote no on H.R. 3446, the Sunshine for Regulatory Decrees and Settlements Act of 2023

Dear Representative,

The Coalition for Sensible Safeguards (CSS), which includes more than 160 diverse labor, environmental, consumer, public health, food safety, financial reform, faith, and scientific integrity groups representing millions of Americans, strongly urges you to oppose H.R. 3446, the Sunshine for Regulatory Decrees and Settlements Act of 2023.

The Sunshine for Regulatory Decrees and Settlements Act of 2023 is a thinly veiled attempt to malign a critical tool in administrative law that empowers the public to hold agencies accountable for failing to implement the law as Congress has instructed. The settlements and decrees that this bill would target are not controversial, but they are invaluable for promoting greater public engagement in the rulemaking process.

In many statutes, Congress sets deadlines for agencies to complete new rules and establish new public safeguards, but agencies often fail to meet these legally binding deadlines. When an agency misses a deadline, often the only available recourse is to obtain a court order forcing the agency to act. It is critical that the public is able to reinforce congressional efforts to ensure that the laws it passes are being enforced in a timely manner.

It is important to emphasize one point about the nature of the settlements and decrees: they impact only the *timing* of agency rulemakings, which is the legal basis for them anyway. These legal actions have no impact on the *substance* of any resulting regulations, nor could they. Such rules are still governed by the standard Administrative Procedure Act (APA) rulemaking process, which requires opportunity for public comment; the formation of a rulemaking record; a final rule that is both consistent with applicable law and justified by the rulemaking record; and ultimately judicial review that ensures compliance with this process.

Independent reviews of deadline settlements and decrees confirm all of this. A December 2014 Government Accountability Office (GAO) report surveyed settlements on major Environmental Protection Agency (EPA) rulemakings to identify whether there was a relationship between rules pushed forward through settlements and the substantive content of the completed rules. Their findings included that that settlements had no influence on the content of the final rules issued.

H.R. 3446 would empower the corporate special interests that oppose new public protections *that are required by law* to perpetuate unlawful agency inaction. By design, H.R. 3446 would create

numerous duplicative, burdensome, and time-consuming procedures that apply to settlements and decrees, further slowing down the rulemaking process and preventing federal law from being effectively implemented. H.R. 3446 would subject any “regulatory” decree or settlement to a lengthy new notice-and-comment process (even though, as noted, agencies are already required to engage in a notice-and-comment process).

The bill would also facilitate intervention by any individuals who declare they would be affected by the regulatory action in question and then include these parties in additional, court-supervised settlement talks. While we are supportive of opportunities for public engagement in the rulemaking process, this requirement would serve no benefit other than gratuitous delay. The only relevant issue is whether an agency violated a statutory deadline; it is unclear what the participation of these additional parties could offer to the resolution of this issue.

The result of H.R. 3446 will be that critical health and safety protections will be even further delayed — by undermining the ability of the public and public interest groups to use the courts to require agencies to carry out Congress’ intent and meet the deadlines Congress has written into federal laws.

The Sunshine for Regulatory Decrees and Settlements Act is an assault on the public protections and safeguards required by the laws Congress passed to protect the health, safety, and welfare of all Americans. H.R. 3446 would waste the limited time and resources of agencies, courts, and the American public.

We strongly urge you to oppose H.R. 3446, the Sunshine for Regulatory Decrees and Settlements Act of 2023.

Sincerely,

A handwritten signature in black ink that reads "Rachel Weintraub". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Rachel Weintraub
Executive Director
Coalition for Sensible Safeguards