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REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY ACT OF 2023

JUNE 1, 2023.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. JORDAN, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 277]

The Committee on the Judiciary, to whom was referred the bill (H.R. 277) 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, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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39–006

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Regulations from the Executive in Need of Scrutiny Act of 2023" or the "REINS Act of 2023".

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.

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

"§ 801. Congressional review

"(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall publish in the Federal Register a list of information on which the rule is based, including data, scientific and economic studies, and cost-benefit analyses, and identify how the public can access such information online, and 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 subparagraphs (A) through (C) of section 804(2);

"(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

"(v) 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 subsection (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 3 legislative days; and

"(B) in the case of the Senate, within 3 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, respectively, and as such are 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 has resulted in or is likely to result in—

"(A) an annual effect on the economy of $100 million or more;

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

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

"(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—

"(A) 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;

"(B) any rule relating to agency management or personnel; or

"(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

"(5) The term 'submission 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.

"§ 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 (2 U.S.C. 907(b)(2)) 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 rule 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 1 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).

Purpose and Summary

H.R. 277, the Regulations from the Executivein Need of Scrutiny Act of 2023, or the "REINS" Act, introduced by Rep. Kat Cammack (R–FL), amends the Congressional Review Act to require affirmative Congressional approval of "major rules," including agency rules with an annual effect on the economy of at least $100 million, before they take effect.

Background and Need for the Legislation

I. THE CONSTITUTION AND THE GROWING PROBLEM OF THE ADMINISTRATIVE STATE

The Constitution separates the powers of the federal government by vesting the legislative power in Congress, the executive power in the President, and the judicial power in the courts.[1] The Framers established this structural separation to provide "security against a gradual concentration of the several powers in the same department" by "giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."[2] In other words—those of James Madison—this separation of powers works such that "[a]mbition [is] made to counteract ambition."[3]

In addition, federal legislation requires the approval of the House of Representatives, the Senate, and the President.[4] These elected officials are accountable to the American people, who may lobby their representatives to support or oppose legislation, and vote them out of office if they pass unpopular or unwise laws.[5] Under the Constitution, "[n]o law or resolution can . . . be passed without the concurrence, first, of a majority of the people, and then, of a

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[1] U.S. CONST. art. I § 1, art. II § 1, art. III § 1; *see* Saikrishna B. Prakash, *A Note on the Separation of Powers*, THE HERITAGE GUIDE TO THE CONSTITUTION (2d ed. 2014).
[2] THE FEDERALIST NO. 51 (James Madison).
[3] *Id.*
[4] U.S. CONST. art. I § 7.
[5] *See* U.S. CONST. art. I § 2, art. II § 1, amends. 1 & 17.

majority of the States."[6] The Framers intended this process to provide an "[i]mpediment . . . against improper acts of legislation."[7]

Contrary to this constitutional structure, the administrative state has consolidated the powers of the federal government in itself. Federal agencies exercise legislative power by issuing rules with the force of law, executive power by enforcing those rules, and judicial power by adjudicating disputes under them.[8] As one witness recently testified before the Judiciary Committee's Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, in "the modern administrative state . . . the executive branch regularly runs the risk of encroaching on the authority of the legislative branch."[9] Another hearing witness framed the matter more starkly:

> If your knowledge of separation of powers is based on reading the Constitution or watching Schoolhouse Rock classics like "I'm Just a Bill" and "Three-Ring Government," you could be forgiven for believing that Congress makes laws and the President executes those laws by enforcement and education. . . . [T]he present reality is entirely different. . . . [F]ederal agencies regularly make new laws to fill gaps left by the legislature, intentionally or unintentionally. And at times, regulatory agencies even act to make new laws despite a lack of any Congressional authority.[10]

Further, the effects of the administrative state's consolidation of power have been magnified by a series of judicial decisions that require courts to enforce an agency's "reasonable" interpretation of the law instead of saying what the law actually is—regardless of "whether the agency has the *correct* interpretation."[11]

Unlike Congress and the President, federal "agencies are not directly accountable to the people."[12] At best, the heads of most federal agencies might be said to have indirect accountability because they are appointed by the President, who in turn is elected.[13] However, some agencies have allowed career employees, rather than just presidentially appointed senior officials, to issue and sign agency rules.[14] For example, 2,094 of the 2,952 rules (more than 70%) issued by the Department of Health and Human Services from January 20, 2001, to January 19, 2018, were issued by career employees or inferior officials who were not confirmed by the Sen-

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[6] THE FEDERALIST NO. 62 (Alexander Hamilton or James Madison).

[7] *Id.*

[8] Michael Uhlmann, *A Note on Administrative Agencies*, THE HERITAGE GUIDE TO THE CONSTITUTION (2d ed. 2014).

[9] *Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H. Comm. on the Judiciary*, 118th Cong. 1 (2023) (statement of Allyson N. Ho, Partner, Gibson, Dunn & Crutcher LLP).

[10] *Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H. Comm. on the Judiciary*, 118th Cong. 2 (2023) (statement of Jonathan A. Wolfson, Chief Legal Officer and Policy Director, Cicero Institute).

[11] Ho, *supra* note 9, at 1; *see, e.g., Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 844 (1984) (requiring judicial "deference to administrative interpretations" of ambiguous statutes); *Auer v. Robbins*, 519 U.S. 452 (1997); *Kisor v. Wilkie*, 588 U.S. __, 139 S. Ct. 2400, 2422 (2019) (requiring judicial "[d]eference to reasonable agency interpretations of ambiguous rules"); *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) (requiring judicial deference to persuasive agency "rulings, interpretations and opinions").

[12] *Chevron*, 467 U.S. at 865.

[13] *See* Exec. Order No. 13,979, 86 Fed. Reg. 6,813 (Jan. 18, 2021).

[14] *See id.*

ate.[15] At the Food and Drug Administration, career employees issued 1,860 of its 1,891 rules (more than 98%) during this same period—and a single career employee signed 385 of them (more than 20%).[16] Civil servants are "insulated from the accountability that national elections bring," and their issuance of agency rules "undermines the power of the American people to choose who governs them."[17]

In addition, while rules made by agencies carry the "force and effect of law,"[18] agency rulemaking procedures lack the rigor and transparency of the Constitution's process for considering and passing laws.[19] Under the Administrative Procedure Act (APA), federal agencies may issue legislative rules merely by publishing a "notice of proposed rulemaking in the Federal Register," providing an opportunity for public feedback (typically through the submission of written comments), and publishing the final rule at least thirty days before its effective date.[20]

Moreover, agencies issue so-called "guidance documents"—including interpretative rules (which explain how an agency interprets the statutes and legislative rules it administers) and general statements of policy (which prospectively advise how an agency may choose to exercise its authority)—without following even the limited procedural protections of notice and comment provided by the APA.[21] Used properly, guidance documents can be valuable tools for agencies to help businesses and individuals navigate the administrative enforcement of laws enacted by Congress. However, as Representative Harriet Hageman recently observed, "we have seen a growing trend whereby administrative agencies attempt to use guidance to make new law while at the same time avoiding the APA process."[22] Through guidance, as one federal appellate court observed, "[l]aw is made, without notice and comment, without public participation, and without publication in the Federal Register."[23] "[T]he public frequently has insufficient notice of guidance documents," which "carry the implicit threat of enforcement action if the regulated public does not comply."[24]

By consolidating the separate constitutional powers of the federal government, exploiting a rulemaking process that is much less rigorous than what the Constitution requires for legislation, and facing only minimal electoral accountability for its actions, the administrative state has been able to impose a quantity and quality of policies that never could have received approval by the House, the

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[15] Angela C. Erickson & Thomas Berry, Pacific Legal Foundation, *But Who Rules The Rulemakers?: A Study of Illegally Issued Regulations at HHS* 18, 35 (Apr. 29, 2019).
[16] *Id.* at 3, 25, 35.
[17] 86 Fed. Reg. at 6,813.
[18] *Chrysler Corp. v. Brown*, 441 U.S. 281, 302–303 (1979).
[19] *See Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H. Comm. on the Judiciary*, 118th Cong. 1 (2023) (statement of Ryan M. Cleckner, Owner, Law Office of Ryan M. Cleckner).
[20] Administrative Conference of the United States & ABA Section of Administrative Law and Regulatory Practice, *Administrative Procedure Act*, FEDERAL ADMINISTRATIVE PROCEDURE SOURCEBOOK (May 25, 2022) (cleaned up); *see* 5 U.S.C. § 553.
[21] *See* 5 U.S.C. § 553(b)(3)(A); *Chrysler*, 441 U.S. at 302 n.31 (citing Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947)).
[22] *Markup of H.R. 288 Before the H. Comm. on the Judiciary*, 118th Cong. 377:8,731–8,733 (2023).
[23] *Appalachian Power Co. v. E.P.A.*, 208 F.3d 1015, 1020 (D.C. Cir. 2000).
[24] Exec. Order No. 13,891, 84 Fed. Reg. 55,235 (Oct. 15, 2019).

Senate, and President.[25] This reality is reflected in the empirical data. In 2021, Congress passed just 143 laws while federal agencies issued 3,257 rules.[26] In other words, the executive branch issued mandates with the force of law over twenty-two times as often as the legislative branch.[27] Moreover, as of 2020, the most recent year for which data is available, agencies had issued more than 70,000 guidance documents.[28]

Agency rules impose an estimated annual cost of $1.927 trillion, equivalent to $14,684 per U.S. household each year, and rivaling the combined total of individual and federal corporate income taxes.[29] One observer commented, "[i]f it were a country, U.S. regulation would be the world's eighth-largest economy (not counting the United States itself), ranking behind France and ahead of Italy."[30] Agency guidance costs Americans an untold additional amount.[31]

Many of the policies imposed by the administrative state are unpopular, radical, or do not reflect the will of the American people. For example, already this year, the Bureau of Alcohol, Tobacco, Firearms and Explosives issued a final rule that effectively bans pistol stabilizing braces across the country,[32] and the Federal Trade Commission issued a proposed rule that would prohibit noncompete clauses in virtually every employment contract nationwide.[33] Agency guidance can have equally pernicious effects. In 2019, the United States Department of Agriculture posted a two-page factsheet on its website that would have required all cattle and bison to be tagged with radio frequency identification (RFID) ear tags.[34] As Representative Hageman noted, "the price tag of this requirement to the cattle and bison industries would have been $2 billion."[35]

II. THE ADMINISTRATIVE PROCEDURE ACT AND THE CONGRESSIONAL REVIEW ACT

The REINS Act builds upon two existing laws governing the administrative state: the Administrative Procedure Act (APA) and the Congressional Review Act (CRA). These statutes are discussed in turn.

Originally enacted in 1946, the APA provides standards for agency rulemaking.[36] Under "formal" rulemaking, an agency may issue a "rule after the kind of trial-type hearing procedures normally reserved for adjudicatory orders."[37] Much more commonly, agencies

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[25] U.S. CONST. art. I § 7.
[26] CLYDE WAYNE CREWS, JR., COMPETITIVE ENTER. INST., TEN THOUSAND COMMANDMENTS 7 (Oct. 26, 2022).
[27] *Id.*
[28] *Id.* at 53.
[29] *Id.* at 6.
[30] *Id.*
[31] *See id.* at 32.
[32] Factoring Criteria for Firearms With Attached "Stabilizing Braces," 88 Fed. Reg. 6478 (Jan. 31, 2023).
[33] Non-Compete Clause Rule, 88 Fed. Reg. 3482, 3535 (Jan. 19, 2023) (to be codified at 16 C.F.R. pt. 910).
[34] U.S. Dep't of Agriculture, *Advancing Animal Disease Traceability: A Plan to Achieve Electronic Identification in Cattle and Bison* (Apr. 2019).
[35] *Markup of H.R. 277 Before the H. Comm. on the Judiciary*, 118th Cong. 99:2,311–2,312 (2023).
[36] *See, e.g.*, 5 U.S.C. §§ 551–559 (agency procedures), 701–706 (judicial review).
[37] Administrative Conference of the United States & ABA Section of Administrative Law and Regulatory Practice, *supra* note 20 (cleaned up).

issue rules through "informal" or notice-and-comment rulemaking. As discussed above, informal rulemaking requires publication of a "notice of proposed rulemaking in the Federal Register," an opportunity for public feedback (typically through the submission of written comments), and publication of the final rule at least thirty days before its effective date.[38]

Fifty years later, Congress passed the CRA in 1996 to help "reclaim[] for Congress some of its policymaking authority" and "give[ ] the public the opportunity to call the attention of politically accountable, elected officials to concerns about new agency rules."[39] The CRA requires agencies to submit rules to Congress and the Government Accountability Office (GAO) before they can take effect, and provides an expedited process for Congress to disapprove a rule by passing a joint resolution.[40] In effect, the CRA gives Congress a legislative veto mechanism over agency rulemaking that satisfies the Constitution's bicameralism and presentment requirements.[41] As then-President Bill Clinton explained in signing the CRA, "th[e] legislation increases congressional accountability for regulations" and "provid[es] expedited procedures for the Congress to review those regulations."[42]

Significantly, the CRA also gives Congress the ability to disapprove of agency guidance. The CRA generally adopts the APA's definition of "rule,"[43] which includes both "interpretative rules" and "general statements of policy"—*i.e.*, agency guidance documents.[44] "Congress intended the CRA to reach a broad range of agency activities, including agency policy statements, interpretive rules, and certain rules of agency organization, despite the fact that those actions are not subject to the APA's requirements for notice and comment."[45] Specifically, "[i]nterpretive rules, general statements of policy, and analogous agency policy guidelines are covered without qualification because they meet the definition of a 'rule' borrowed from" the APA, and therefore "these types of documents are covered under the congressional review provisions of the" CRA.[46] In other words, "some agency actions, such as guidance documents, that are not subject to notice-and-comment rulemaking procedures may still be considered rules under the CRA and thus could be overturned using the CRA's procedures."[47] Indeed, Congress has used the CRA to disapprove of and overturn a guidance bulletin issued by the Consumer Financial Protection Bu-

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[38] *Id.; see* 5 U.S.C. § 553 (rulemaking).

[39] 142 Cong. Rec. S3683–01, 683–84 (daily ed. Apr. 18, 1996) (statement of Sens. Nickles, Reid, and Stevens); *see* 5 U.S.C. §§ 801–808.

[40] *See* Maeve P. Carey & Christopher M. Davis, Congressional Research Service, *The Congressional Review Act (CRA): Frequently Asked Questions* 1 (Nov. 12, 2021); Christopher M. Davis, Congressional Research Service, *The 118th Congress and the Congressional Review Act "Lookback" Mechanism* 1 (Dec. 1, 2022).

[41] *See* Carey & Davis, *supra* note 40, at 23 n. 128.

[42] Statement on Signing the Contract With America Advancement Act of 1996, 1 Pub. Papers 525 (Mar.29, 1996).

[43] 5 U.S.C. § 804(3).

[44] 5 U.S.C. § 553(b)(3)(A); *see Chrysler*, 441 U.S. at 302 n.31; *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015) ("Not all 'rules' must be issued through the notice-and-comment process," and "the notice-and-comment requirement 'does not apply' to 'interpretative rules [or] general statements of policy.'")

[45] Valerie C. Brannon & Maeve P. Carey, Congressional Research Service, *The Congressional Review Act: Determining Which "Rules" Must Be Submitted To Congress* 12 (Mar. 6, 2019).

[46] 142 Cong. Rec. H2987–01, 3005 (daily ed. Mar. 28, 1996) (statement of Rep. McIntosh).

[47] Brannon & Carey, *supra* note 45, at1.

reau.[48] Similarly, GAO has determined that various guidance documents issued by the Fish and Wildlife Service; the Centers for Medicare and Medicaid Services; and the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation were rules for purposes of the CRA.[49]

However, the CRA suffers from a flawed design. As the Democrat witness testified at a recent hearing before the Judiciary Committee's Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, "the President who oversees and ostensibly is directing the very rulemaking" being reviewed by Congress "must sign th[e] joint resolution from Congress to undo that rule."[50] That is unlikely to occur, making the CRA little more than a "paper tiger" much of the time.[51] Perhaps unsurprisingly then, the CRA has been used only sparingly: just twenty agency rules have been overturned under it.[52] This means that, on average, Congress has disapproved less than one rule per year since the passage of the CRA. During that time, federal agencies issued more than 95,000rules—and Congress has rejected just 0.02percent of the rules issued by agencies.[53]

III. THE REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY ACT

The Regulations from the Executive in Need of Scrutiny (REINS) Act would invert the CRA's standard of legislative disapproval for major rules—those causing "an annual effect on the economy of $100 million or more," "a major increase in costs or prices," or other "significant adverse effects" on the economy.[54] Specifically, rather than merely permitting Congress to overturn agency rules of which it disapproves, the REINS Act would require affirmative Congressional approval before a major rule takes effect. This would help to ensure that Congress—and, by extension, the American people—has a voice in major policy decisions, and would remedy the CRA's design flaw that requires the president to undo his own administration's rulemaking for Congress to disapprove of an agency's major rule.

The REINS Act would help restore the legislative power to the legislative branch, and would promote electoral accountability by giving elected representatives a greater role in policymaking—and unaccountable bureaucrats a reduced one. In the words of one witness who recently testified before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust, "[t]he REINS Act is a good proposal to restrict legislative activity by agencies and restore the proper relationship between the legislative and executive branches."[55] At the markup of this bill, Chairman Jim Jor-

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[48] Joint Resolution of May 21, 2018, Pub. L. No. 115–172, 132 Stat. 1290.
[49] Letter from Susan A. Poling, General Counsel, GAO, to Sen. Pat Toomey (Oct.19, 2017).
[50] *Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H. Comm. on the Judiciary*, 118th Cong. 66–67 (2023) (testimony of Emily Hammond, Professor, George Washington University Law School).
[51] Thomas Spulak, *Bring Back The Legislative Veto*, THE HILL (Aug.20, 2013).
[52] *See* Maeve P. Carey & Christopher M. Davis, Congressional Research Service, *The Congressional Review Act* (CRA): A Brief Overview 1 (Feb. 27, 2023).
[53] *See* Crews, *supra* note 26, at 47.
[54] REINS Act, H.R. 277, 118th Cong. § 3 (2023).
[55] *Reining in the Administrative State: Reclaiming Congress's Legislative Power: Hearing Before the Subcomm. on the Administrative State, Regulatory Reform, and Antitrust of the H.*

dan similarly observed that the REINS Act "helps put legislative power back in the hands of the legislature," and "is a good start toward restoring the constitutional separation of powers and increasing the accountability of policy makers to the American people." [56]

Significantly, the REINS Act applies to agency guidance. As discussed above, the CRA's definition of "rule" includes agency guidance, and the REINS Act retains this same definition.[57] The REINS Act therefore requires affirmative Congressional approval of agency guidance causing "an annual effect on the economy of $100 million or more," "a major increase in costs or prices," or other "significant adverse effects" on the economy.[58] Moreover, this is the only logical way to construe the bill: if the REINS Act's definition of "rule" somehow excluded guidance, it would create a "loophole" through which agencies might attempt to avoid the bill's Congressional approval requirements by recharacterizing major rules as guidance.[59]

Like the CRA, the REINS Act has enjoyed longstanding bipartisan support. The House passed prior versions of the REINS Act with bipartisan support in each of the 115th, 114th, 113th, and 112th Congresses.[60]

Hearings

For the purposes of clause 3(c)(6)(A) of House rule XIII, the following hearing was used to develop H.R. 277: "Reining in the Administrative State: Reclaiming Congress's Legislative Power," a hearing held on March 10, 2023, before the Subcommittee on the Administrative State, Regulatory Reform, and Antitrust. The Committee heard testimony from the following witnesses:

- Allyson N. Ho, Partner and Co-Chair of Appellate and Constitutional Law, Gibson, Dunn & Crutcher LLP;
- Jonathan Wolfson, Chief Legal Officer and Policy Director, Cicero Institute;
- Ryan Cleckner, Co-Founder, Gun University LLC and Owner, Law office of Ryan M. Cleckner; and
- Emily Hammond, Professor, George Washington University Law School.

The hearing addressed the growth of the administrative state and how it has aggrandized legislative power.

Committee Consideration

On May 24, 2023, the Committee met in open session and ordered the bill, H.R. 277, favorably reported with an amendment in the nature of a substitute, by a roll call vote of 13 to 5, a quorum being present.

Comm. on the Judiciary, 118th Cong. 18–19 (2023) (testimony of Jonathan A. Wolfson, Chief Legal Officer and Policy Director, Cicero Institute).

[56] *Markup of H.R. 277 Before the H. Comm. on the Judiciary*, *supra* note 35, at 5:90–6:95.

[57] *Compare* REINS Act, H.R. 277, 118th Cong. § 3 (2023), with 5 U.S.C. § 804(3).

[58] REINS Act, H.R. 277, 118th Cong. § 3 (2023).

[59] *Markup of H.R.277 Before the H. Comm. on the Judiciary*, *supra* note 35, at 94:2, 198; *see Markup of H.R. 288 Before the H. Comm. on the Judiciary*, *supra* note 22, at 377:8, 729–8,735; Wolfson, *supra* note 55, at 63–64.

[60] *See* REINS Act, H.R. 26, 115th Cong. (2017); REINS Act, H.R. 427, 114th Cong. (2015); REINS Act, H.R. 367, 113th Cong. (2013); REINS Act, H.R. 10, 112th Cong. (2011).

Committee Votes

In compliance with clause 3(b) of House rule XIII, the following roll call votes occurred during the Committee's consideration of H.R. 277:

1. Vote on Amendment #2 to H.R. 277 ANS, offered by Mr. Nadler, failed 9–17

2. Vote on Amendment #4 to H.R. 277 ANS, offered by Ms. Scanlon, failed 5–15

3. Vote on favorably reporting H.R. 277, as amended, passed 13–5

COMMITTEE ON THE JUDICIARY

Date: 5/24/23

118th CONGRESS

25-19

ROLL CALL

Vote on: Nadler Amndt (#2) to HR277 ANS

Roll Call #: 1

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)		✓		MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)	✓		
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)		✓		MR. SWALWELL (CA)			
MR. MASSIE (KY)				MR. LIEU (CA)			
MR. ROY (TX)		✓		MS. JAYAPAL (WA)			
MR. BISHOP (NC)		✓		MR. CORREA (CA)	✓		
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)				MS. ESCOBAR (TX)	✓		
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)				MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)	✓		
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)		✓					
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 9 Nays: 17 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 5/24/23

118th CONGRESS

25-19

ROLL CALL

Vote on: Scanlon Amndt (#9) to HR 277 ANS

Roll Call #: 2

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*		✓		MR. NADLER (NY) *Ranking Member*	✓		
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)		✓		MR. COHEN (TN)			
MR. JOHNSON (LA)		✓		MR. JOHNSON (GA)			
MR. BIGGS (AZ)		✓		MR. SCHIFF (CA)	✓		
MR. McCLINTOCK (CA)		✓		MR. CICILLINE (RI)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)		✓		MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)		✓		MR. CORREA (CA)			
MS. SPARTZ (IN)		✓		MS. SCANLON (PA)	✓		
MR. FITZGERALD (WI)		✓		MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)		✓		MS. DEAN (PA)	✓		
MR. GOODEN (TX)				MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)		✓		MS. ROSS (NC)	✓		
MR. NEHLS (TX)		✓		MS. BUSH (MO)			
MR. MOORE (AL)		✓		MR. IVEY (MD)			
MR. KILEY (CA)		✓					
MS. HAGEMAN (WY)							
MR. MORAN (TX)							
MS. LEE (FL)		✓					
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 5 Nays: 15 Present:

Passed: _____ Failed: X

COMMITTEE ON THE JUDICIARY

Date: 5/24/23

118th CONGRESS

25-19

ROLL CALL

Vote on: Final passage of HR 277 as amended

Roll Call #: 3

REPUBLICANS	AYE	NO	PRESENT	DEMOCRATS	AYE	NO	PRESENT
MR. JORDAN (OH) *Chairman*	✓			MR. NADLER (NY) *Ranking Member*		✓	
MR. ISSA (CA)				MS. LOFGREN (CA)			
MR. BUCK (CO)				MS. JACKSON LEE (TX)			
MR. GAETZ (FL)	✓			MR. COHEN (TN)			
MR. JOHNSON (LA)	✓			MR. JOHNSON (GA)			
MR. BIGGS (AZ)	✓			MR. SCHIFF (CA)		✓	
MR. McCLINTOCK (CA)	✓			MR. CICILLINE (RI)			
MR. TIFFANY (WI)				MR. SWALWELL (CA)			
MR. MASSIE (KY)	✓			MR. LIEU (CA)			
MR. ROY (TX)				MS. JAYAPAL (WA)			
MR. BISHOP (NC)	✓			MR. CORREA (CA)			
MS. SPARTZ (IN)				MS. SCANLON (PA)		✓	
MR. FITZGERALD (WI)	✓			MR. NEGUSE (CO)			
MR. BENTZ (OR)				MS. McBATH (GA)			
MR. CLINE (VA)	✓			MS. DEAN (PA)		✓	
MR. GOODEN (TX)				MS. ESCOBAR (TX)			
MR. VAN DREW (NJ)				MS. ROSS (NC)		✓	
MR. NEHLS (TX)	✓			MS. BUSH (MO)			
MR. MOORE (AL)	✓			MR. IVEY (MD)			
MR. KILEY (CA)	✓						
MS. HAGEMAN (WY)							
MR. MORAN (TX)							
MS. LEE (FL)	✓						
MR. HUNT (TX)							
MR. FRY (SC)							

Roll Call Totals: Ayes: 13 Nays: 5 Present:

Passed: X Failed:

Committee Oversight Findings

In compliance with clause 3(c)(1) of House rule XIII, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974* and with respect to the requirements of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has requested but not received a cost estimate for this bill from the Director of the Congressional Budget Office. The Committee has requested but not received from the Director of the Congressional Budget Office a statement as to whether this bill contains any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. The Chairman of the Committee shall cause such estimate and statement to be printed in the Congressional Record upon its receipt by the Committee.

Congressional Budget Office Cost Estimate

With respect to the requirement of clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, a cost estimate provided by the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Committee Estimate of Budgetary Effects

With respect to the requirements of clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the *Congressional Budget Act of 1974*.

Duplication of Federal Programs

Pursuant to clause 3(c)(5) of House rule XIII, no provision of H.R. 277 establishes or reauthorizes a program of the federal government known to be duplicative of another federal program.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of House rule XIII, H.R. 277 would amend the Congressional Review Act to require affirmative Congressional approval of "major rules," including agency rules with an annual effect on the economy of at least $100 million, before they take effect.

Advisory on Earmarks

In accordance with clause 9 of House rule XXI, H.R. 277 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e), or 9(f) of House Rule XXI.

Federal Mandates Statement

An estimate of federal mandates prepared by the Director of the Congressional Budget office pursuant to section 423 of the *Unfunded Mandates Reform Act* was not made available to the Committee in time for the filing of this report. The Chairman of the Committee shall cause such estimate to be printed in the *Congressional Record* upon its receipt by the Committee.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

Applicability to Legislative Branch

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the *Congressional Accountability Act* (Pub. L. 104–1).

Correspondence

Committee on Rules
U.S. House of Representatives
H-312 The Capitol
Washington, DC 20515-6269

May 25, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Jordan:

On May 25, 2023, the Committee on the Judiciary ordered H.R. 277, the Regulations from the Executive in Need of Scrutiny (REINS) Act of 2023, reported to the House. As you know, the Committee on Rules was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under rule X of the Rules of the House of Representatives over the rules of the House and special orders of business. The Committee has exclusive jurisdiction over several provisions related to expedited procedures for consideration of legislation in the House.

Because of your willingness to consult with my committee regarding this matter, I will waive consideration of the bill by the Committee on Rules. By agreeing to waive its consideration of the bill, the Committee on Rules does not waive its jurisdiction over H.R. 277. In addition, the Committee reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Rules for conferees on H.R. 277 or related legislation.

I also request that you include our exchange of letters on this matter in the committee report to accompany H.R. 277 and in the *Congressional Record* during consideration of this legislation on the House floor. Thank you for your attention to these matters.

Sincerely,

Tom Cole
Chairman

cc: The Honorable Kevin McCarthy, Speaker, U.S. House of Representatives
The Honorable James P. McGovern, Ranking Member, Committee on Rules
The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–6906
judiciary.house.gov

May 25, 2023

The Honorable Tom Cole
Chairman
Committee on Rules
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Cole:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 277, the Regulations from the Executive In Need of Scrutiny Act of 2023, so that the measure may proceed expeditiously to the House floor.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation and in the *Congressional Record* during consideration of this legislation on the House floor. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Jim McGovern, Ranking Member, Committee on Rules
The Honorable Jason Smith, Parliamentarian

JODEY C. ARRINGTON, TEXAS
CHAIRMAN

BRENDAN F. BOYLE, PENNSYLVANIA
RANKING MEMBER

U.S. House of Representatives
COMMITTEE ON THE BUDGET
Washington, DC 20515–6065

May 30, 2023

The Honorable Jim Jordan
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Jordan:

I am writing regarding H.R. 277, the *Regulations from the Executive in Need of Scrutiny (REINS) Act*, which was ordered reported by the Committee on the Judiciary on May 24, 2023.

The bill contains provisions that fall within the jurisdiction of the Committee on the Budget. In order to expedite House consideration of H.R. 277, the Committee on the Budget will forgo action on this bill. This is being done with the understanding that it does not waive any jurisdiction over the subject matter contained in H.R. 277 or similar legislation and that the Committee will be appropriately consulted and involved as this bill or similar legislation moves forward so that the Committee may address any remaining issues that fall within its jurisdiction. The Committee on the Budget also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation and requests your support of any such request.

I would appreciate a response to this letter confirming this understanding with respect to H.R. 277 and would ask that a copy of our exchange of letters on this matter be included in your committee report and in the *Congressional Record* during floor consideration of H.R. 277.

Sincerely,

Jodey C. Arrington
Chairman
Committee on the Budget

cc: The Honorable Kevin McCarthy, Speaker
The Honorable Jerrold Nadler
The Honorable Brendan Boyle
The Honorable Jason Smith, Parliamentarian

JIM JORDAN, Ohio
CHAIRMAN

JERROLD NADLER, New York
RANKING MEMBER

ONE HUNDRED EIGHTEENTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON THE JUDICIARY
2138 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6216
(202) 225–6906
judiciary.house.gov

May 31, 2023

The Honorable Jodey Arrington
Chairman
Committee on the Budget
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Arrington:

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 277, the Regulations from the Executive In Need of Scrutiny Act of 2023, so that the measure may proceed expeditiously to the House floor.

I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee, or prejudice its jurisdictional prerogatives on this measure or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will include the exchange of these letters in the Judiciary Committee's report to accompany this legislation and in the *Congressional Record* during consideration of this legislation on the House floor. I appreciate your cooperation regarding this legislation and look forward to continuing to work together on matters of shared jurisdiction during this Congress. Thank you for your attention to this matter.

Sincerely,

Jim Jordan
Chairman

cc: The Honorable Jerrold Nadler, Ranking Member, Committee on the Judiciary
The Honorable Brendan Boyle, Ranking Member, Committee on the Budget
The Honorable Jason Smith, Parliamentarian

Section-by-Section Analysis

Section 1. Short Title. This section sets forth the short title of the bill as the "Regulations from the Executive in Need of Scrutiny Act of 2023."

Section 2. Purpose. This section sets forth the purpose of the bill as increasing accountability and transparency in the federal regulatory process.

Section 3. Congressional Review of Agency Rulemaking. This section amends and restates the CRA, 5 U.S.C. § 801 *et seq.,* as follows:

Section 801. Congressional review:

- Requires agencies promulgating rules to provide information to Congress and the Comptroller General, including whether the rule is a major rule.
- Permits a major rule to take effect only if Congress enacts a joint resolution of approval.
- Allows presidential approval of a major rule for a single ninety-day period on the basis of an emergency or national security, or to enforce criminal laws or implement a trade agreement.
- Prevents a major rule that is not approved from being considered again in the same Congress.

Section 802. Congressional approval procedure for major rules:

- Establishes an expedited process for Congress to vote on joint resolutions of approval of major rules.
- Requires the Senate or House majority leader to introduce a joint resolution within three session or legislative days of receiving a report classifying an agency rule as a major rule, and requires the committees with jurisdiction to report within fifteen session or legislative days of its introduction.
- In the Senate, provides for a vote on a joint resolution of approval within fifteen session days after it is reported by the committee.
- In the House, permits a vote on a joint resolution of approval that has appeared on the calendar for at least five legislative days on the second and fourth Thursdays of each month, and requires a vote by the third Thursday on which a vote may be taken.

Section 803. Congressional disapproval procedure for nonmajor rules:

- Retains the CRA's disapproval mechanism for non-major rules, allowing such rules to take effect after sixty days if not affirmatively disapproved by Congress.

Section 804. Definitions:

- Retains the CRA's definitions of "Federal agency," "major rule," and "rule" with minor alteration.
- Defines the term "nonmajor rule" as "any rule that is not a major rule."
- Adapts the definition of "submission or publication date" for non-major rules from section 802 of the CRA, and defines the term for major rules as the date on which Congress receives the information required by the REINS Act.

Section 805. Judicial Review:

• Permits courts to determine whether agencies have completed the REINS Act's requirements for a rule to take effect, and limits judicial use of a joint resolution of approval to this purpose.

• Provides that a joint resolution of approval neither modifies an agency's statutory authority nor affects claims alleging defects in a rule.

Section 806. Exemption for monetary policy:

• Recodifies section 807 of the CRA.

Section 807. Effective date of certain rules:

• Recodifies section 808 of the CRA.

• Limits agencies' ability to determine the effective date of rules for which notice and public procedure is impracticable, unnecessary, or contrary to the public interest to non-major rules.

Section 4. Budgetary Effects of Rules Subject to Section 802 of Title 5, United States Code. This section amends the Balanced Budget and Emergency Deficit Control Act, 2 U.S.C. § 907(b)(2), to provide that a major rule "affecting budget authority, outlays, or receipts shall be assumed to be effective unless it is not approved."

Section 5. Government Accountability Office Study of Rules. This section requires the Comptroller General to report to Congress within one year the number of rules in effect, the number of major rules in effect, and their total estimated economic cost.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 5, UNITED STATES CODE

PART I—THE AGENCIES GENERALLY

* * * * * * *

[CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

[§ 801. Congressional review

[(a)(1)(A) Before a rule can 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, including whether it is a major rule; and

[(iii) 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;

[(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

[(iii) the agency's actions relevant 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 in each House of the Congress by the end of 15 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

[(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 on the latest of—

[(A) the later of the date occurring 60 days after the date on which—

[(i) the Congress receives the report submitted under paragraph (1); or

[(ii) the rule is published in the Federal Register, if so published;

[(B) if the Congress passes a joint resolution of disapproval described in section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

[(i) on which either House of Congress votes and fails to override the veto of the President; or

[(ii) occurring 30 session days after the date on which the Congress received the veto and objections of the President; or

[(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

[(4) Except for a major rule, a rule shall take effect as otherwise provided by law after submission to Congress under paragraph (1).

[(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

[(b)(1) A rule shall not take effect (or continue), if the Congress enacts a joint resolution of disapproval, described under section 802, of the rule.

[(2) A rule that does not take effect (or does not continue) under paragraph (1) may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissued or new rule is specifically author-

ized by a law enacted after the date of the joint resolution disapproving the original rule.

[(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a rule that would not take effect by reason of subsection (a)(3) may take effect, 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 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 or the effect of a joint resolution of disapproval under this section.

[(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 adjourns a session of Congress through the date on which the same or succeeding Congress first convenes its next session, section 802 shall apply to such rule in the succeeding session of Congress.

[(2)(A) In applying section 802 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 (as a rule that shall take effect) 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).

[(e)(1) For purposes of this subsection, section 802 shall also apply to any major rule promulgated between March 1, 1996, and the date of the enactment of this chapter.

[(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

[(A) such rule were published in the Federal Register on the date of enactment of this chapter; and

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

[(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

[(f) Any rule that takes effect and later is made of no force or effect by enactment of a joint resolution under section 802 shall be treated as though such rule had never taken effect.

[(g) If the Congress does not enact a joint resolution of disapproval under section 802 respecting a rule, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

[§ 802. Congressional disapproval procedure

[(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 rule submitted by the ____ relating to ____, and such rule shall have no force or effect." (The blank spaces being appropriately filled in).

[(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Congress with jurisdiction.

[(2) For purposes of this section, the term "submission or publication date" means the later of the date on which—

[(A) the Congress receives the report submitted under section 801(a)(1); or

[(B) the rule is published in the Federal Register, if so published.

[(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 20 calendar days after the submission or publication date defined under subsection (b)(2), 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 further to 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 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.

[(g) This section is enacted by Congress—

[(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a 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 it supersedes other rules only to the extent that it is inconsistent with such rules; and

[(2) with full recognition of the constitutional right of either House to change the rules (so far as relating 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. Special rule on statutory, regulatory, and judicial deadlines

[(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of enactment of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

[(b) The term "deadline" means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

[§ 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 that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

[(A) an annual effect on the economy of $100,000,000 or more;

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

[(C) 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.

The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

[(3) The term "rule" has the meaning given such term in section 551, except that such term does not include—

[(A) any rule of particular applicability, including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing;

[(B) any rule relating to agency management or personnel; or

[(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

[§ 805. Judicial review

[No determination, finding, action, or omission under this chapter shall be subject to judicial review.

[§ 806. Applicability; severability

[(a) This chapter shall apply notwithstanding any other provision of law.

[(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

[§ 807. 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.

[§ 808. 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 which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor 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.]

CHAPTER 8 CONGRESSIONAL REVIEW OF AGENC RULEMAKING

§ 801. C ss

(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall publish in the Federal Register a list of information on which the rule is based, including data, scientific and economic studies, and cost-benefit analyses, and identify how the public can access such information online, and 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 subparagraphs (A) through (C) of section 804(2);

(iv) a list of any other related regulatory actions intended to implement the same statutory provision or regulatory objective as well as the individual and aggregate economic effects of those actions; and

(v) 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 subsection (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. C[illegible]

(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 3 legislative days; and

(B) in the case of the Senate, within 3 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 ap-

peared 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, respectively, and as such are 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. C ss s

(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. D[illegible]

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 has resulted in or is likely to result in—

(A) an annual effect on the economy of $100 million or more;

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

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

(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—

(A) 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;

(B) any rule relating to agency management or personnel; or

(C) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

(5) The term "submission 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.

§ 805. J[illegible]

(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. E [illegible]

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. E [illegible] ***s***

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.

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BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

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PART C—EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

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SEC. 257. THE BASELINE.

(a) IN GENERAL.—For any budget year, the baseline refers to a projection of current-year levels of new budget authority, outlays, revenues, and the surplus or deficit into the budget year and the outyears based on laws enacted through the applicable date.

(b) DIRECT SPENDING AND RECEIPTS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions:

(1) IN GENERAL.—Laws providing or creating direct spending and receipts are assumed to operate in the manner specified in those laws for each such year and funding for entitlement authority is assumed to be adequate to make all payments required by those laws.

(2) EXCEPTIONS.—(A)(i) No program established by a law enacted on or before the date of enactment of the Balanced Budget Act of 1997 with estimated current year outlays greater than $50,000,000 shall be assumed to expire in the budget year or the outyears. The scoring of new programs with estimated outlays greater than $50,000,000 a year shall be based on scoring by the Committees on Budget or OMB, as applicable. OMB,

CBO, and the Budget Committees shall consult on the scoring of such programs where there are differences between CBO and OMB.

(ii) On the expiration of the suspension of a provision of law that is suspended under section 171 of Public Law 104–127 and that authorizes a program with estimated fiscal year outlays that are greater than $50,000,000, for purposes of clause (i), the program shall be assumed to continue to operate in the same manner as the program operated immediately before the expiration of the suspension.

(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current rates.

(D) If any law expires before the budget year or any outyear, then any program with estimated current year outlays greater than $50,000,000 that operates under that law shall be assumed to continue to operate under that law as in effect immediately before its expiration.

(E) BUDGETARY EFFECTS OF RULES SUBJECT TO SECTION 802 OF TITLE 5, UNITED STATES CODE.—Any rule 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.

(3) HOSPITAL INSURANCE TRUST FUND.—Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

(c) DISCRETIONARY APPROPRIATIONS.—For the budget year and each outyear, the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

(1) INFLATION OF CURRENT-YEAR APPROPRIATIONS.—Budgetary resources other than unobligated balances shall be at the level provided for the budget year in full-year appropriation Acts. If for any account a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the level available in the current year, adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

(2) EXPIRING HOUSING CONTRACTS.—New budget authority to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year, with the per-contract re-

newal cost equal to the average current-year cost of renewal contracts.

(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES.—Budgetary resources for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.

(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION.—Current-year new budget authority for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

(5) INFLATORS.—The inflator used in paragraph (1) to adjust budgetary resources relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year. The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross domestic product chain-type price index for that fiscal year differs from the average of such estimated index for the current year.

(6) CURRENT-YEAR APPROPRIATIONS.—If, for any account, a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority among budget accounts in the current year, the current-year level for an account shall reflect transfers accomplished by the submission of, or assumed for the current year in, the President's original budget for the budget year.

(d) UP-TO-DATE CONCEPTS.—In deriving the baseline for any budget year or outyear, current-year amounts shall be calculated using the concepts and definitions that are required for that budget year.

(e) ASSET SALES.—Amounts realized from the sale of an asset shall not be included in estimates under section 251, 252, or 253 if that sale would result in a financial cost to the Federal Government as determined pursuant to scorekeeping guidelines.

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Minority Views

I. INTRODUCTION

H.R. 277, the "Regulations from the Executive in Need of Scrutiny Act of 2023" or the "REINS Act," is an extreme, unworkable bill that would prevent executive branch agencies from executing the statutes passed by Congress, allow for more corporate influence in rulemaking, and endanger the health and safety of all U.S. residents. By requiring both houses of Congress to pass, and the president to sign, a joint resolution of approval for any "major rules" before they can take effect, this bill would grind the gears of agency

rulemaking to a halt. Corporate interests that may oppose any major rule from an agency could easily block the implementation of any rules by convincing just a small number of Congressional members from voting to approve any major rule. And the bill would also endanger the health and safety of Americans, who rely on administrative agencies to ensure that our air is safe to breathe, our water is safe to drink, our food is safe to eat, and the life-saving medicines we depend on are safe and effective.

Furthermore, the bill claims to fix a problem that does not exist. Congress already has numerous tools to shape agency rulemaking and does not need the overly burdensome regime contemplated by the bill. Finally, the bill may be unconstitutional because its effect is nearly indistinguishable from the one-House legislative veto that the U.S. Supreme Court held to be unconstitutional in *INS v. Chadha*.

II. CONCERNS

H.R 277 is highly problematic because it would restrict agency rulemaking, it would undermine public health and safety, it is based on a false premise that regulations undermine economic and employment growth, it ignores Congress' numerous tools for affecting agency rulemaking, and it may be unconstitutional. The Coalition for Sensible Safeguards (CSS)—a coalition of more than 160 consumer, labor, scientific, research, faith, community, environmental, small business, good government, public health and public interest groups—opposes the REINS Act.[1] In addition to CSS, 67 other groups, including the AFL–CIO, Consumer Reports, the Sierra Club, and United Steelworkers, have voiced their opposition to the REINS Act, arguing that the bill fundamentally threatens the government's ability to protect the public from harm.[2] The National Resources Defense Council likewise opposes the REINS Act on similar grounds.[3]

A. The REINS Act Would Severely Restrict Federal Rulemaking

The REINS Act would effectively act as a chokehold on Federal agency rulemaking by requiring congressional assent to major rules before they can take effect. This approval process would be in addition to an already heavily proceduralized rulemaking process that often takes years to conclude. Under the new approval process imposed by the legislation, congressional gridlock or deliberate inaction would serve as a veto of even critically needed rules that often took years to develop.[4]

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[1] *68 Groups Tell Congress: Reject the REINS Act*, COALITION FOR SENSIBLE SAFEGUARDS (Feb. 27th, 2023), https://sensiblesafeguards.org/press/68-groups-tell-congress-reject-the-reins-act/.

[2] *Id.*

[3] David Goldston, *The REINS Act: Why Congress Should Hold Its Horses*, NRDC (Jan. 04, 2017), https://www.nrdc.org/experts/david-goldston/reins-act-why-congress-should-hold-its-horses.

[4] *H.R. 367, the REINS Act of 2013: Promoting Jobs, Growth, and American Competitiveness: Hearing Before the Subcomm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 113th Cong. (2013) (statement of Ronald M. Levin, Distinguished Professor of Law, Washington University in St. Louis) [hereinafter *Levin Statement*] ("The reality is that the Act would in substance revive the legislative veto as a tool for controlling agency rulemaking."); *Regulations from the Executive in Need of Scrutiny Act of 2011: Hearing on H.R. 10 Before the Subcomm. on Courts, Commercial and Admin. Law of the H. Comm. on the Judiciary*, 112th Cong. (2011) (statement of David Goldston, Director of Government Affairs, Natural Resources Defense Council) [hereinafter *Goldston Statement*] ("Agencies often take several years to formulate a particular safeguard, reviewing hundreds of scientific studies, drawing on their

Continued

Notably, the REINS Act would consume vast amounts of limited congressional time and resources, which would necessarily have to be diverted from other critical legislative, oversight, and constituent responsibilities. Even under expedited procedures, Congress would likely be forced to choose between passing judgment on complex regulations, on the one hand, and other important duties, on the other.

By requiring Congress to pass judgment on major rules without the time or expertise to make a well-informed decision, the REINS Act would allow well-subsidized business interests to further influence the rulemaking process. Major rules generally involve highly technical and complex scientific data as well as other types of evidence that require substantive expertise to decipher. Simply put, Congress lacks the time, resources, or technical knowledge to provide meaningful review of such rules.[5] In the face of this complexity and time constraints, Members of Congress would be susceptible to readily available "answers" from well-funded industry lobbyists, who no doubt would be on hand to supply Members with industry-friendly talking points and other information regarding the merits of a particular rule.[6]

Adding to the concern about Congress's ability to provide meaningful review of major rules is the fact that Congress would have only 70 legislative days within which to act, and committees of jurisdiction would have only 15 legislative days to consider a proposed rule's merits. Moreover, under the bill's expedited House procedures, floor consideration of joint resolutions of approval would be limited to just the second and fourth Thursdays of every month.

B. By Placing a Chokehold on Major Rules, the REINS Act Threatens Public Safety

While the REINS Act is unnecessary and unworkable, its most pernicious effect would be putting the health, welfare, and safety of Americans at risk. In addition to their economic benefits, regulations also promote improved air quality, healthier children, reduced discrimination, protection of our public health and safety, protection of human dignity, and other non-quantifiable, but fundamental, values.

The costs of delaying these highly beneficial rules could be devastating. As the Obama Administration noted in its opposition to the REINS Act during the 113th Congress, the REINS Act would "delay and, in many cases, thwart implementation of statutory mandates and execution of duly enacted laws, increase business uncertainty, undermine much-needed protections of the American public, and create unnecessary confusion. There is no justification for such an unprecedented requirement."[7]

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own experts in science and economics, empaneling outside expert advisors, gathering thousands of public comments, and going though many levels of executive branch review").

[5] *Levin Statement, supra* note 4 at 2 ("The REINS Act would impose great strain on congressional workloads. In many instances, this would be a poor use of scarce legislative time, because the subject matter of numerous major rules is arcane and most prudently left to specialized administrators.").

[6] *Goldston Statement, supra* note 4 at 3 ("Lobbyists would descend on Congress with even greater fervor than is currently the case to pressure Members to take their side on individual regulations.").

[7] Executive Office of the President, Statement of Administration Policy on H.R. 367, Regulations from the Executive in Need of Scrutiny Act of 2013 (July 21, 2013).

During Markup, Representatives Nadler (D–NY) and Scanlon (D–PA) introduced amendments to exempt rules from the EPA, FDA and those affecting childhood illnesses from the bill. These amendments were defeated on party lines.

C. The REINS Act Is Based on a False Premise that Regulations Harm Economic and Employment Growth

Proponents of the REINS Act assert that Federal agency regulations impose excessive costs on businesses, stifle job creation, and hobble the Nation's economic growth. This premise, however, is based on flawed data and completely ignores the significant benefits of regulation. In support of their arguments concerning the costs of regulation, proponents of anti-regulatory measures, such as the REINS Act, regularly cite a widely-debunked study by economists Nicole and Mark Crain, which claims that Federal rulemaking imposes a cumulative burden of $1.75 trillion a year.[8] The Congressional Research Service (CRS) conducted an extensive examination of the Crain study and criticized much of its methodology.[9] CRS noted that the authors of the Crain study themselves told CRS that their study was "not meant to be a decision-making tool for lawmakers or Federal regulatory agencies to use in choosing the 'right' level of regulation. In no place in any of the reports do we imply that our reports should be used for this purpose. (How could we recommend this use when we make no attempt to estimate the benefits?)" [10] CRS concluded that "a valid, reasoned policy decision can only be made after considering information on both costs and benefits" of regulation.[11]

Furthermore, the benefits of regulations routinely outweigh their costs. The Office of Management and Budget (OMB) has annually estimated the costs of regulations. Significantly, OMB's reports to Congress include data on the benefits of regulations.

D. Congress Already Has Numerous Tools to Shape Agency Rulemaking

Congress already has various mechanisms at its disposal to oversee and influence the Federal agency rulemaking process. In its simplest and most straightforward form, Congress can delegate rulemaking authority to agencies with greater specificity or restriction, which would limit an agency's rulemaking authority either from the outset or through later amendment of an agency's organic statute. Congress also can simply pass legislation to stay the effect of an existing rule, as the House did in the 112th Congress with respect to the Environmental Protection Agency's cement manufacturing standards.[12]

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[8] NICOLE V. CRAIN & W. MARK CRAIN, THE IMPACT OF REGULATORY COSTS ON SMALL FIRMS (Sept. 2010).

[9] CURTIS W. COPELAND, ANALYSIS OF AN ESTIMATE OF THE TOTAL COSTS OF FEDERAL REGULATIONS (Apr. 6, 2011).

[10] *Id.* at 26 (quoting an e-mail from Nicole and W. Mark Crain to the author of the CRS report).

[11] *Id.* The Economic Policy Institute also issued a critique of the Crain study outlining additional concerns with the study's methodology and data. *See* Andrew Green, *Flaws Call for Rejecting Crain and Crain Model: Cited $1.75 Trillion Cost of Regulations Is Not Worth Repeating*, ECON. POL'Y INST. (July 19, 2011), https://www.epi.org/publication/flaws_call_for_rejecting_crain_and_crain_model/.

[12] Cement Sector Regulatory Relief Act of 2011, H.R. 2681, 112th Cong. (2011).

Congress may also impose restrictions on agency rulemaking through the appropriations process. These restrictions can take a variety of forms, including restrictions on the finalization of particular proposed rules, restrictions on regulatory activity within certain areas, restrictions on implementation or enforcement of certain rules, and conditional restrictions that prevent a rule from taking effect until an agency takes certain steps.[13]

E. The REINS Act May Be Unconstitutional

The REINS Act raises Constitutional concerns because it may provide for what arguably is an unconstitutional one-House legislative veto. As Professor Ronald Levin of Washington University Law School testified, one House of Congress can effectively veto an agency's rule under the REINS Act's congressional approval mechanism by simply not acting within the 70-legislative-day time frame provided for in the bill.[14] Such a mechanism would be, in effect, indistinguishable from the one-House legislative veto that the Supreme Court held to be unconstitutional in *INS v. Chadha*.[15] The Court held in that decision that a veto of a Federal agency's legislative act was itself a legislative act that required passage by both Houses of Congress and presentment to the President for his signature.[16] Under H.R. 277, one House could effectively veto an agency rule (i.e., a legislative act) without meeting the Constitutional requirements discussed in *Chadha* by simply not acting to pass a resolution of approval. The REINS Act, therefore, may violate the constitutional rule announced in *Chadha*.

Others—such as the Center for Progressive Reform (the Center)—have called the REINS Act unconstitutional for a different reason.[17] The Center argues that because the REINS Act requires major rules to be approved by Congress before they become effective, it is "deviating from the requirements of the Constitution."[18]

Ordinarily, "when Congress effects change through bicameralism and presentment, it creates a law—a statute."[19] However, under the REINS Act, instead of creating a new law, the effect of bicameralism and presentment would be to approve a rule.[20] While lawmakers are free to ratify previous agency action, they must do so by passing a statute, which by its nature can only be amended by Congress. In contrast, any rule approved by Congress under the REINS Act would be subject to change by the promulgating agency.[21] Similarly, Congress can pass laws which explicitly allow agencies to make subsequent regulatory changes (such as the Attorney General's ability to reclassify substances under the Controlled Substances Act). However, the REINS Act contains no such language.[22] As a result, the Center concludes that the REINS Act falls outside the established boundaries of Congressional practice and, by re-

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[13] *See* CURTIS W. COPELAND, CONGRESSIONAL INFLUENCE ON RULEMAKING AND REGULATION THROUGH APPROPRIATIONS RESTRICTIONS (Aug. 5, 2008).
[14] *Levin Statement, supra* note 4 at 7.
[15] *Immigration & Naturalization Serv. v. Chadha*, 462 U.S. 919 (1983) (holding that a one-House legislative veto violated the Constitution's bicameralism and presentment clauses).
[16] *Id.*
[17] William Funk, *Why the REINS Act is Unconstitutional*, CTR. FOR PROGRESSIVE REFORM (Feb. 14, 2017), https://progressivereform.org/cpr-blog/why-the-reins-act-is-unconstitutional/.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

quiring both Houses to approval of major rules, violates the constitution.

During Markup, Representative Ivey (D–MD) probed the unconstitutionality of the bill at length, making the case that it clearly represents a legislative veto as contemplated in *INS v. Chadha*.

III. CONCLUSION

H.R. 277 is a radical bill designed to undermine the authority Congress delegated to agencies through statutes to execute the law. This proposal, which originated in the Tea Party movement of the 2010s, is an old and unworkable idea that would prevent agencies' rulemaking, jeopardize the health and safety of all US residents, and may be unconstitutional. The bill is premised on the false notion that regulations harm economic and employment growth and ignores the many other ways that Congress can influence the rulemaking process. If Republicans were actually concerned about our administrative state, they would join with us to help ensure that the rulemaking process cannot be gamed by corporate interests and allow for additional ways for public feedback to influence the process. H.R. 277 would prevent any major rule from coming to effect and thus break down the execution of the laws Congress passed.

For all of these reasons, I dissent and urge all of my colleagues to oppose this legislation.

JERROLD NADLER,
Ranking Member.

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