

S. 951: Regulatory Accountability Act of 2017

Promoting transparency, accountability, and common sense in the regulatory process

Sponsored by Senators Rob Portman and Heidi Heitkamp

Frequently Asked Questions and Answers

1. What does the RAA do?

The RAA amends the Administrative Procedure Act (APA) to increase accountability and transparency in the federal regulatory process. The RAA codifies the bipartisan regulatory process the government has followed for more than two decades, which was established under Executive Order 12,866. The RAA will make sure federal agencies balance regulatory costs and benefits when developing new rules or changing existing regulations, and it provides stakeholders more opportunity to get involved earlier in the regulatory process. These changes will cause agencies to write smarter, better regulations that will increase certainty, reduce unnecessary regulatory burdens on job creators, and still allow agencies to protect public health and safety and the environment. The APA has not been significantly updated since its enactment in 1946, and it is important to revisit such a critical law after more than 70 years.

2. Will agencies still be able to produce new rules under the RAA?

Yes. The RAA does not mean an end to new rules. This bill codifies the requirements set forth in Executive Order 12,866 that most agencies already must follow. Agencies will still be able to protect public health and safety, but will do so in a more transparent manner.

3. How is the Senate version of the RAA different than the House version?

The Senate RAA reflects significant bipartisan effort to reform the regulatory system. The Senate RAA requires agencies to consider a reasonable number of alternatives for the most expensive rules, but provides that considering three such alternatives carries a presumption of reasonableness. It provides that agencies must choose the most cost-effective of the alternatives it considers, but allows agencies to choose a less cost-effective alternative if they provide a detailed explanation of their reasoning. It also protects regulatory standards and procedures that are set forth in other federal laws. The Senate RAA does not eliminate *Chevron* deference.

4. How does the RAA affect the length of the rulemaking process?

The RAA will not significantly impact the length of the rulemaking process for most rules. Agencies are already required to analyze costs and benefits, consider reasonable alternatives, and engage with the public during rulemaking. The RAA codifies those longstanding requirements for the first time, helping to ensure agencies continue to follow the robust rulemaking process that already exists. For the most expensive rules—those having an annual effect of \$100 million or more annually—agencies will have to allow stakeholders an earlier opportunity to engage in the rulemaking process on the front end, and stakeholders will have the chance to petition the agencies for a hearing to review the facts underlying those rules. Because this limited set of rules is so expensive, it is worth the marginal increase in time to get these rules right. The RAA still allows agencies to promulgate interim rules more quickly for good cause, such as to protect national security.

5. How does the Senate RAA approach cost-benefit analysis?

The Senate RAA makes sure agencies analyze both qualitative and quantitative costs and benefits when developing rules, and does not favor one type of analysis over the other. It requires agencies to consider the direct costs and benefits, the nature and degree of risks posed by the rule and any agency action, and, to the extent practicable, the cumulative and indirect costs and benefits.

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Frequently Asked Questions and Answers, Continued

6. Why is Office of Information and Regulatory Affairs' expanded role in the regulatory process under the RAA a good idea?

OIRA plays a vital role in reviewing major and significant regulations, as well as an important coordination function among cooperating agencies. If provided sufficient resources, OIRA review of proposed regulations should prevent errors or omissions by federal agencies. That will lead to better rules and a better rulemaking process.

7. How is the RAA different than legislation like REINS, SCRUB, and ALERT?

The RAA represents an effort to make the regulatory process more effective by improving analysis, transparency and accountability through commonsense reform. It focuses on improving the underlying regulatory process contained within the APA. It always has had bipartisan support in both chambers of Congress.

8. How will conflicts between authorizing statutes and the RAA regarding rulemaking considerations and procedures be resolved?

A broad savings clause ensures that specific statutory requirements that agencies operate under regarding regulatory analysis and procedure take precedence over general RAA requirements. When Congress specifically instructs an agency to promulgate a rule in a certain way, those requirements will control over the general instructions of the RAA. This ensures that the regulatory requirements in organic authorizing laws such as the Clean Air Act and Occupational Safety and Health Act take precedence over the general RAA requirements.

9. Will the RAA information accessibility requirements mean that personal information or a business's proprietary information end up on a public regulatory docket?

No. The RAA includes clear language that only information that could be subject to a Freedom of Information Act request must be posted on the docket. Personal and proprietary information will be protected.

10. How will the RAA affect challenges of regulations in court?

The RAA allows courts to make sure agencies follow the law regarding the RAA's procedural requirements, such as requiring agencies to engage with stakeholders in rulemaking and to complete meaningful cost-benefit analysis. It also ensures courts have latitude to remand rules back to agencies without vacating a rule when it's appropriate, such as for harmless procedural errors.

By following the thorough analysis called for by the RAA, agencies should produce better rules based upon more thorough analyses. Better rules will mean fewer court challenges and rules delayed for years and years by courts.

11. How does the RAA affect the balance of power between the executive and legislative branches of government?

The RAA is a long overdue update of the APA to reflect the modern realities of society and governance. Its enactment would ensure the current President, and future administrations, work under the current overarching bipartisan practices that drive the regulatory process.