



H.R. 427—Regulations From the Executive in Need of Scrutiny (Young, R-IN)

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FLOOR SCHEDULE: SCHEDULED FOR CONSIDERATION ON JULY 28, 2015, [UNDER A STRUCTURED RULE](#), WHICH PROVIDES FOR ONE HOUR OF GENERAL DEBATE

TOPLINE SUMMARY: H.R. 427 would amend the [Congressional Review Act of 1996](#) (CRA) to require a joint resolution of approval signed into law within 70 days before an executive branch agency’s major rule can take effect.

▪ **CONSERVATIVE CONCERNS:** There are no substantive concerns. This bill would provide an additional check on the executive branch’s expansive rulemaking authority.

- **Expand the Size and Scope of the Federal Government? No**
- **Encroach into State or Local Authority? No**
- **Delegate Any Legislative Authority to the Executive Branch? No**
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits? No**

DETAILED SUMMARY AND ANALYSIS: Under current law, Congress can repeal, using expedited voting procedures in the Senate, a federal agency’s final rule by passing a joint resolution of disapproval within 60 days of publication of the rule in the Federal Register, or the date the agency submits the rule to Congress and the Government Accountability Office (GAO). The president must then sign the joint resolution for it to possess the force of law and negate the federal agency rule. This is extremely pressing, as we have seen [countless](#) rules under this administration that expand the scope of Obamacare.

COST: The Congressional Budget Office (CBO) [estimates](#) that 82 major rules have been issued per year, on average, over the past five years. However, CBO cannot determine the budgetary effects of making all future major rules subject to Congressional approval. It is likely H.R. 427 would have significant effects on both direct spending and revenues, and pay-as-you-go procedures apply

This legislation would maintain the current CRA system for disapproving non-major rules, while establishing a congressional procedure requiring approval for major rules created by federal agencies. [Major rules](#) include those that result in, or are likely to result in: (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, productivity, investment, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic and export markets.

Section 3 of H.R. 427 would amend chapter 8 of the CRA, detailing the method for congressional review of new major rules.

801. This section would require Congress to enact a joint resolution of approval within 70 days prior to the enactment of a major rule and empowers the President to grant 90-day waivers for emergency situations, including responses to imminent threats or safety, to protect national security, or to implement trade agreements. This section would also establish carry-over provisions from one Congress to the following. It would also require enhanced reporting of federal rules to Congress and the comptroller general.

802. This section would require the introduction of a joint resolution of approval by the respective majority leaders, or their designees, within three legislative days of the publication of a rule in the federal register and the submission of the rule to Congress. This section would also prohibit any amendments to the joint resolution during its consideration. This section would provide for referral of the measure to the appropriate committees in the House and Senate.

802 Subsections (c) and (d) would address the process for expedited consideration in the Senate. Under Senate procedure, a final passage vote would have to occur within 15 session days after a committee reports the measure or is discharged. A motion to proceed would be in order any time after that point. All points of order would be waived, and the motion to proceed would not be subject to a motion to amend, postpone, move on to other business, or a motion to reconsider. Upon agreeing to a motion to proceed to a joint resolution, debate would be limited in the Senate to two hours. Further, the joint resolution is similarly not amendable, and motions to postpone, recommit, and proceed to other business would not be in order. All appeals to the joint resolution would be decided without debate, and a vote on final passage would be required to occur following the conclusion of debate.

802 Subsection (e) would address consideration of the joint resolution under House procedure. Committees in the House would be required to report the resolution without amendment no later than 15 days after referral, otherwise they are automatically discharged from additional consideration. Five or more legislative days after the resolution is placed on the calendar, the speaker would be allowed to recognize a member in favor of passage of the joint resolution on the second or fourth Thursdays of each month, to call for immediate consideration. The resolution would be debatable for one hour, with all points of order waived. All amendments, motions to recommit or reconsider would be prohibited. If a vote has not been taken by the third Thursday after which the Speaker is authorized to recognize a member for consideration, a final passage vote would occur that day without amendment.

802 Subsection (f) would provide for the House to not take a vote on passage of a Senate-passed joint resolution if that resolution is a revenue measure.

802 Subsection (g) would allow for sections 802 and 803 to apply as rulemaking; these rules with respect to joint resolutions would supersede other rules when explicitly provided. Congress may change these rules in the same manner in which they can change other rules.

803. Disapproval for non-major rules under the Congressional Review Act would remain unchanged. This section would permit Congress to disapprove a rule if the president signs, or if Congress overrules a veto, a joint resolution passed by both Houses. Additionally, this section would provide for expedited consideration in the Senate.

804. This section would exempt rules of particular applicability, rules relating to agency management, and rules relative to agency organization from the REINS Act.

805. This section would provide for exemption of judicial review for any finding or action under the REINS Act.

806. This section, similar to the Congressional Review Act, would exempt rules on monetary policy from the Board of governors of the Federal Reserve or Federal Open Market Committee.

807. This section would permit rules relating to hunting, camping and fishing, and select non-major rules to take effect in spite of section 801.

Section 4 of H.R. 427 would allow for an amendment to section 257(b)(2) of the [Balanced Budget and Emergency Deficit Control Act of 1985](#), that would stipulate that rules that undergo the congressional approval process under this act that affect budget authority, outlays or receipts, would be effective unless they are not in accordance with section 802.

Section 5 would call for a study and report to Congress detailing the number of regulations in effect on the date of enactment of the REINS Act, the number of major regulations, and the total estimated cost of such regulations. Reports submitted to Congress would be required to assess whether or not major rules impose new limits or mandates on the private-sector.

Notes on Constitutionality of the REINS Act

In the past, some have expressed concern over whether or not the REINS Act violates the constitutionally mandated separation of powers between the legislative and executive branches of the federal government. Some have equated the REINS Act with the Supreme Court's ruling in [INS v. Chadha](#) (Chadha), in which the Court held that a unicameral legislative veto is unconstitutional. In this case, per Article I of the Constitution, legislative acts need both bicameralism and presentment—meaning, both houses of Congress and the President, or a super-majority of both houses, would be required, which differentiates the REINS Act from Chadha. The REINS Act does not authorize either house of Congress to overturn a valid regulation; rather, it prevents a major rulemaking from taking effect until a joint resolution from Congress is passed, satisfying the bicameral and presentment requirements. These formal requirements for legislation enumerated in Article I, allow congressional oversight of an agency without violating the separation of powers. Moreover, the REINS Act derives constitutionality from the fact that federal agencies do not have inherent power, rather they are delegated power by the legislature. Congress has previously conditioned regulatory authority on compliance with other procedures in different spheres, including with the [Administrative Procedure Act](#).

In [2012](#), witnesses testifying for the constitutionality of the REINS Act stated: “Agencies have no power to promulgate legislative rules unless it is given to them by Congress...[arguments against REINS’ constitutionality] runs off of the assumption that there is some core inherent prerogative of the President in relation to legislative rulemaking that is threatened by the REINS Act. However, if all of executive branch agencies’ rulemakings powers must come from Congress, there can’t be any such core Article 2 prerogative.”

And further, “The regulations that agencies promulgate are rules of conduct. And in fact, courts talk about these regulations all the time as ‘legislative rules.’ So we are not talking about here about executive power fundamentally; we are talking here about legislative power. So it is a question of Congress reclaiming some of its legislative powers.”

The REINS Act passed the 113th Congress, by a vote of [232-183](#). It passed the 112th Congress by a vote of [241-184](#). A past legislative bulletin can be found [here](#). A committee report for this legislation can be found [here](#).

AMENDMENTS

1. **Young (R-IA)**—This amendment would require agencies to publish a list of information on which the rule is based in the federal register. This would include data, scientific studies, and economic studies, in addition to cost-benefit analyses. This information would be made available to the public online.
2. **Smith (R-Mo)**—This amendment would require Congressional approval of all rules promulgated under the Affordable Care Act. This amendment was adopted last Congress by recorded vote, [227-185](#).
3. **Sessions (R-TX), Davis (R-IL), Barr (R-KY), Wenstrup (R-OH)**—This amendment would require the federal agency submitting the report on a proposed federal rule as part of the cost-benefit analysis submitted to both houses of Congress and the comptroller general to include an assessment of anticipated jobs gained or lost and to specify whether those jobs will come from the public or private sector. This amendment passed by voice in the past two Congresses.
4. **Johnson (D-GA)** – This amendment would exempt from the bill’s definition of a major rule any rule that the administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget determines would result in net job growth. This amendment was defeated in committee [9-17](#). This amendment was defeated in the 113th Congress by a recorded vote of [182-235](#).
5. **Capps (D-CA)**—This amendment would allow that any rule intended to provide safety to natural gas or hazardous materials pipelines, or to prevent or mitigate impact from pipeline spills to be exempted from “major rule” status under the bill.
6. **Cicillini (D-RI)**—This amendment would exempt rules that pertain to public safety or health from the requirements of the REINS Act.
7. **Jackson Lee (D-TX)**—This amendment would allow for a special rule to apply to the safety of products to be used or consumed by a child under 2 years of age, including cribs, infant formula, or car seats.
8. **Moore (D-WI)**—This amendment would exempt Consumer Financial Protection Bureau rules from the requirements of the REINS Act.
9. **Nadler (D-NY)**—This amendment would exempt from the bill’s congressional rule requirement any rule pertaining to nuclear reactor safety standards. This amendment failed last Congress by recorded vote, [186-229](#).
10. **Pocan (D-WI)**—This amendment would exempt from the bill any rule that relates to veterans or veterans affairs. The same amendment failed by a vote of [183-240](#) during the 112th Congress, and by a vote of [190-226](#) in the 113th Congress.

ORGANIZATIONS IN SUPPORT

[Americans for Prosperity](#) (Key Vote)

[National Taxpayers Union](#) (Key Vote)

[FreedomWorks](#)

COMMITTEE ACTION: This bill was introduced on January 21, 2015 and was referred to the House Committees on the Judiciary, Rules, and Budget. It was reported favorably by the Committee on the Judiciary on April 15, 2015.

ADMINISTRATION POSITION: The Statement of administration policy can be found [here](#). According to the statement, if the President were presented with H.R. 427, his senior advisors would recommend he veto the legislation.

CONSTITUTIONAL AUTHORITY: Congress has the power to enact this legislation pursuant to the following: The constitutional authority on which this legislation is based is found in Article 1, Section 8, Clause 18 and Article I, Section 5, Clause 2.

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