U.S. Chamber of Commerce
ENVIRONMENT, TECHNOLOGY & REGULATORY AFFAIRS

The Truth about the Regulatory Accountability Act and Food Safety Regulations

Introduction

We all agree that American consumers deserve safe food. However, a coalition of groups recently came out against the Regulatory Accountability Act (RAA) (H.R. 5), calling it the "Filthy Food Act." This fictitious label is based on an unsupported assertion that the RAA would prevent the passage of food safety regulations that protect public health. Nothing could be further from the truth. The RAA, contrary to what the advocacy groups claimed, is designed not to stop regulation, but rather to *improve* regulation by ensuring that regulatory agencies only use the best possible information to inform rulemakings.

The advocacy groups are asking companies that produce and sell food not to support the RAA. The legislation would ensure that regulatory agencies do not ignore valuable input from businesses during the regulatory process and issue rules that do not use the best available scientific and economic data.

Unfortunately, in choosing food safety regulations as their target, these pro-regulation advocacy groups have inadvertently chosen to highlight why the RAA would not be burdensome or slow down the regulatory process. When agencies do the right thing when they're issuing regulations in the first place, everybody wins.

False Claims

While the advocacy groups claim that the RAA would effectively block future food safety regulations, the RAA only automatically applies to regulations that cost over $1 billion a year. The four most costly regulations issued under the 2011 Food Safety and Modernization Act (FSMA) by the Food and Drug Administration (FDA) all had annual compliance costs between $100 million and $500 million. Under the RAA, even these most costly food safety rules would only come under the additional process requirements of the RAA if members of the public petitioned the issuing agency with a specific request to initialize the added scrutiny. If the agency did not believe the additional scrutiny was needed based on the reasoning provided in the petition, it could choose not to perform the additional RAA regulatory processes.

The advocacy groups claim that the RAA, if applied to food safety regulations, would slow down or stop these rules from being implemented. However, even if the four rules mentioned above with costs in excess of $100 million annually had been subject to the RAA, it is unlikely that a petition asking the FDA to undergo the additional RAA regulatory processes would have been filed. The FDA took its time issuing these regulations and involved the public and industry in

the process. The agency sought information and input prior to issuing proposed rules, then performed extensive outreach, gathered feedback, allowed for a lengthy comment period, and only after reviewing all the feedback did the agency issue a final rule. In other words, the agency conducted a thorough rulemaking that solicited input from all affected parties and took that input into consideration before issuing regulations, which is exactly what the RAA would require. The end result is that the FDA issued significant new food safety rules that protect human and animal health as Congress specified in the FSMA, and industry supported these rules because the FDA took the time and care to work with food producers, seeking their input and advice in designing compliance standards.

Background on the "Regulatory Accountability Act"

The process of issuing a new regulation has not been substantially updated since Congress passed the Administrative Procedure Act (APA) in 1946. The RAA is the *only* piece of legislation that addresses the regulatory process by updating the APA to reflect the realities of the modern administrative state. Specifically, the RAA recognizes that federal agencies often issue sweeping, costly, controversial new rules without appropriately considering all of the relevant facts and information, the result of Congress having passed overly broad legislation that leads to unintended consequences when agencies are allowed to fill in too many blanks.

For the most complex and costly new rules, the RAA would increase transparency by requiring agencies to invest more effort to gather data, evaluate alternatives, and engage the public for more input on the costs and benefits of the rule. Further, the RAA would provide stakeholders with a means to confront unfounded assumptions or unrealistic data used in agency rulemakings. Additionally, the RAA allows courts to review the evidence to ensure that agencies are truly evaluating all evidence and basing their rulemakings on only the best scientific and economic analysis.

The goal of regulatory reform is to increase transparency and accountability in the rulemaking process. American businesses and food producers are not trying to skirt their responsibility to consumers; they simply want certainty in a complex regulatory system. Rules should be written properly the first time, just like the FDA did with the FSMA.

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