January 10, 2017

Dear Representative:

The Center for Science and Democracy at the Union of Concerned Scientists, representing more than 500,000 members and supporters across the country, strongly opposes H.R. 5, the Regulatory Accountability Act of 2017. H.R. 5 should be named the Regulatory Impossibility Act, as it would bring our science-based system of protecting the public from health, safety, and environmental dangers to a grinding halt.

H.R. 5 resurrects and combines a number of ill-advised and radical proposals that would together create excessive delays and extreme hurdles in the regulatory process, discouraging or preventing agencies from developing and finalizing crucial public protections. It is irresponsible and undemocratic to rush through, in the second week of a new Congress, a complicated and radical legislative proposal without giving any new members the opportunity to evaluate what they are voting on.

At the center of H.R. 5 is a version of the Regulatory Accountability Act (RAA) of 2015. This title will impose at least 70 new burdensome and time consuming procedural requirements on resource-strapped agencies. These onerous requirements not only fail to make any real improvements or efficiencies in the regulatory system, but they would inevitably lead to significant delays to a rulemaking process that is already cumbersome and lengthy. This result, which seems to be the real intention of the RAA, leads to ever more procedural requirements that add no new information or perspective but simply requires agencies to jump through needless additional hoops to protect the public.

Furthermore, the RAA provision would force agencies to ignore science by requiring them to finalize rules that are the least costly to industry. This means that agencies would be required by law to protect your constituents from dangerous chemicals based on what is least costly to industry instead of what doctors determine adequately protects the American people.

The Union of Concerned Scientists is particularly concerned about the impact H.R. 5 would have on how science informs the policymaking process. Because the legislation allows for limitless delays through repetitive and redundant comment and response requirements, we are concerned that fundamental public health and safety protections will be delayed or abandoned. Last year, Congress overwhelmingly voted
to remove similar language from a law that paralyzed the ability of federal agencies to regulate known carcinogens. If this language were to be applied to all agency rulemaking, agencies would be compromised from protecting the public, despite clear scientific evidence of major health risks for decades.

Overall, the RAA proposes changes to the rulemaking process that would further stack the deck in favor of regulated industries, which already enjoy significant influence over the rulemaking process, and give wealthy corporations increased leverage to challenge and undermine science-based safeguards during rulemaking and in court.

Other provisions in H.R. 5 that would paralyze the development of science-based safeguards include:

- A provision that would abolish agency deference, a well-established framework under Chevron U.S.A, Inc. v. Natural Resources Defense Council\(^1\), which allows federal agencies that have sufficient scientific and technical expertise to interpret and administer laws passed by Congress. Not only would judges be given the authority to override scientific expertise and the administrative record and substitute their own inexpert view, but agencies would be hamstrung waiting for interpretive clarity before moving forward with urgently needed health, safety and environmental protections. Courts should defer to agency technical experts for landmark health, safety, and environmental laws to be implemented effectively.

- A provision that would require a court reviewing a “high-impact” rule to automatically block its enforcement until litigation is resolved. This tactic could extend implement crucial public health safeguards by years, encouraging more litigation and needlessly exposing the public to threats. It is notable that this is a one-sided requirement. It would not prevent a polluter or other regulated entity from moving forward with their plans until all litigation is resolved.

H.R. 5 is particularly harmful because of its impact on science-based, bipartisan laws, such as the Clean Water Act and Clean Air Act which enjoy widespread public support. These laws direct federal agencies to uphold core national values such as ensuring access to clean air and drinking water. If Congress wants to roll back these laws, it should do so directly, not through deceptively named “regulatory reform” legislation.

Science-based regulations are vital to protecting the health and safety of all Americans, but especially African American and Latino communities, which often face disproportionate public health and environmental threats. The legislation would therefore exacerbate existing racial disparities. Many of these communities, often on the “fenceline” of major industrial facilities, have been waiting for decades to address

\(^1\) 467 U.S. 837 (1984)
major health and safety issues. The changes proposed in H.R. 5 will inevitably extend those delays even further, with no relief in sight.

Do not be fooled. H.R. 5 does not improve our regulatory system. It would cripple the ability of federal agencies protect the public, making it nearly impossible for the federal government to implement strong, science-based safeguards. This bill puts constraints on federal science and would essentially nullify popular, long-standing laws. It would shift the burden of dealing with public health and environmental threats from those who create them to American taxpayers. For all of these reasons, we strongly urge you to vote no on H.R. 5.

Sincerely,

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Director
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Union of Concerned Scientists