

## PROTECTIONS OF PUBLIC HEALTH & SAFETY POTENTIALLY BLOCKED BY THE SO-CALLED “REGULATORY ACCOUNTABILITY ACT”

The “Regulatory Accountability Act,” S. 951 (RAA) would block or severely hamper efforts to adopt important protections for the public from virtually all major hazards from polluters, disreputable companies selling dangerous food, toys and other products, and from other forms of corporate overreach. For example:

### **Selected Examples of Rules at Risk from the *Regulatory Accountability Act***

Issue	Safeguard	Why we need it
<b>Food Safety (FDA):</b>	Recently-issued FDA protections for fruits, vegetables, and other foods to <b>protect against foodborne disease</b> . The RAA would have likely blocked/impeded these major rules.	According to CDC, about 48 million Americans get sick, 128,000 are hospitalized, and 3,000 die from eating contaminated food annually.
<b>Meat &amp; Poultry Safety (USDA)</b>	USDA <a href="#">proposal</a> to <b>strengthen the safety of pork</b> by improving hog slaughter rules. While this proposal was not considered economically a major rule, it could still fall victim to some of the RAA’s burdens. <sup>1</sup>  Additionally, industry and consumer groups have <a href="#">promised</a> to unveil <b>recommended strengthening of meat and poultry inspection and food safety standards</b> for USDA in 2017. These rules would likely be considered major and could be blocked/impeded by the RAA.	USDA proposed a New Swine Slaughter Inspection System would facilitate pathogen reduction in pork products by permitting inspection activities that are more effective in ensuring food safety; improving animal welfare, and making better use of resources. A joint meat and poultry industry and consumer group proposal to improve food safety is expected later this year. These would all be put at risk by the bill.
<b>Air travel safety (FAA)</b>	Airline <a href="#">Passenger Bill of Rights</a> is a rule intended to ensure passengers don’t sit on the tarmac, are better compensated for being bumped, etc. While this rule was not considered economically a major rule, it could still have fallen victim to some of the RAA’s burdens. It has been suggested the rules	The <a href="#">recently-issued</a> Passenger Bill of Rights rules may never have been issued and new revisions could be put at risk by the bill. There have recently been <a href="#">proposals to strengthen</a>

<sup>1</sup> The RAA would require agencies to consider counterproposals offered by opponents of *any* rule—major or not. Consideration of those proposals would be subject to judicial review if an opponent contended that the agency didn’t consider the rule thoroughly enough. The RAA also provides that the White House’s OMB will establish guidelines for assessment of “costs and benefits of proposed and final rules,” for “cost-effectiveness of proposed and final rules,” and for “risk assessments that are relevant to rulemaking.” None of these appear to be limited to major or high impact rules. Indeed, the RAA says that “the rigor of cost-benefit analysis *required* by the guidelines ...shall be commensurate, as determined by [OMB], with the economic impact of a rule.”(emphasis added) We can presume that opponents of rules would challenge any perceived failure to comply with OMB’s guidelines in court.

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	<p>should be strengthened to ensure passengers are not dragged off planes due to overbooking.</p> <p>Other recent major <a href="#">FAA rules</a> <b>ensure that drones will not cause crashes with commercial aircraft.</b> The RAA would have likely blocked/impeded these major rules.</p> <p>The FAA also has <a href="#">proposed to update airworthiness requirements</a> to <b>ensure the safety of commuter planes.</b> While this proposal was not considered economically a major rule, it could still fall victim to some of the RAA’s burdens.</p>	<p>protections so passengers cannot be dragged off planes to deal with overbooking after the infamous video of a United passenger being violently removed from a plane. The FAA also recently updated its rules to ensure that drones will not interfere with commercial and other aviation due to numerous reports of risky use of this increasingly widespread technology.</p>
<b>Lead in Drinking Water</b>	<p>EPA has <a href="#">promised</a> to strengthen the rule that <b>protects people against lead-contaminated drinking water</b> from lead pipes (Lead and Copper rule) in light of the Flint water disaster and <a href="#">nationwide lead issues</a>. The RAA likely would impede or block this rule’s issuance.</p>	<p>The rule would be expected to include stronger requirements for installing corrosion control, better monitoring for lead, and removal of lead service lines.</p>
<b>Asbestos and Toxic Chemicals</b>	<p>In a bipartisan effort, Congress passed long-awaited reforms to the Toxic Substances Control Act in 2016. As a result of this legislation, <a href="#">EPA is on the cusp</a> of <b>regulating asbestos.</b> The RAA is likely to impede/block the asbestos and other toxics controls.</p>	<p>Asbestos is a known, dangerous cancer-causing agent. EPA’s efforts to protect people from its health effects are a long time coming, and this bill could stymie them permanently.</p>
<b>Large Truck and Bus Safety</b>	<p>Federal Motor Carrier Safety Administration <a href="#">recently issued</a> a major <b>rule to establish a national database with records of drug and alcohol violations and require that employers query the system</b> to determine whether current and prospective employees have incurred a drug or alcohol violation that would prohibit them from performing safety-sensitive functions. This likely would have been impeded/blocked by the RAA.</p> <p>FMCSA also <a href="#">recently issued</a> a major new <b>rule with standards for competence and training of new entry-level drivers of large trucks and buses.</b> The rule is based on consensus recommendations from a negotiated rulemaking committee of industry and other stakeholders that held a series of public</p>	<p>Drug and alcohol use has been linked to many fatal and other serious accidents caused by drivers of large trucks and buses. Additionally, poorly-trained or incompetent drivers have caused such accidents.</p> <p>These protections will decrease commercial motor vehicle-related fatalities and injuries. They will ensure better new large truck and bus driver training and competence, and would help ensure that drivers</p>

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	meetings. A December 2016 petition seeks to stop the rule; the RAA likely would have impeded/blocked the rule.	operating on the nation's highways who have convictions for driving under the influence would be flagged.
<b>Vehicle Safety (National Highway Traffic Safety Administration, NHTSA) and Autonomous Vehicles</b>	<p>NHTSA plans to issue a <b>final rule on vehicle-to-vehicle (V2V) communications</b> in Fiscal Year 2017 to ensure protection of drivers while encouraging the development of new automotive technologies. RAA likely would delay or block this major rule.</p> <p>Additionally, current NHTSA rules <a href="#">need to be updated</a> to address soon-to-come self-driving vehicles. There is a risk that many states may adopt conflicting rules absent federal standards. The RAA could potentially prevent these efforts as well.</p>	V2V communications are expected to become a key aspect of vehicle automation. The NHTSA proposal would mandate V2V communication on light vehicles, allowing cars to 'talk' to each other to alert drivers of danger, avoid crashes and save lives. These technologies can also play a supporting role as autonomous vehicles gain market acceptance.
<b>Rail Safety for "bomb trains" (DOT, Pipeline and Hazardous Materials Safety Administration (PHMSA) and Federal Railroad Administration (FRA))</b>	DOT <a href="#">issued a rule</a> in 2015 to <b>strengthen safe transportation of flammable liquids by rail on so-called "bomb trains."</b> The economically significant rule would have been subject to the RAA's most burdensome requirements, had the bill been law at the time. These include cost benefit analysis of counterproposals offered by opponents of the rule as well as trial like hearings. The RAA would likely have impeded, weakened or blocked the rule.	This rule sets enhanced risk-based standards for many oil-carrying tanks; requires needed, safer break standards; and safer protocols for trains transporting large amounts of flammable material.
<b>Public transit (DOT, Federal Transit Authority (FTA))</b>	DOT's Federal Transit Administration (FTA) issued a Public Transportation Safety Program <a href="#">final rule</a> that establishes a <b>comprehensive safety program to improve the safety of federally-funded public transportation systems.</b> While this was not found to be an economically significant rule, even such rules would be subject to several of the RAA's requirements (see footnote 1).	This final rule is the umbrella rule for all other FTA safety rules and guidance documents, and formally adopts the Safety Management Systems approach to safety as the basis of the FTA Safety Program.
<b>Women's Health (FDA)</b>	FDA <a href="#">has said</a> it plans to <b>amend its regulations governing mammography.</b> The amendments would update the Mammography Quality Standards Act of 1992. If the proposed rule has a concentrated effect on one industry or brings costs over \$100 million	FDA plans this action to address changes in mammography technology & processes that have occurred since the 1997

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	(regardless of the benefits), then it could be subject to the RAA’s major provisions. Even if it does not, the RAA would still create new obstacles to completion (see footnote 1).	rules, and to address breast density reporting to patient and health care providers.
<b>Nuclear Power Plant Safety (Nuclear Regulatory Commission)</b>	<p>NRC expects to propose <b>cybersecurity protections to prevent hackers from attacking Nuclear Fuel Facilities</b> <a href="#">later in 2017</a>. It is noteworthy, however, that the RAA could interfere with the proposal by subjecting independent agencies such as the NRC to political interference by the White House.</p> <p>The NRC also <a href="#">proposed rules</a> to <b>avoid a Fukushima-like disaster</b> in the U.S.; these could be derailed by the RAA.</p>	The NRC has suggested a series of steps to avoid hackers from attacking nuclear fuel facilities and to avoid a nuclear disaster like what occurred in Fukushima, Japan in 2011. These rules could be put at risk by the bill.
<b>Chemical Facility Anti-Terrorism Standards (Department of Homeland Security, National Protection and Programs Directorate)</b>	In 2007, DHS issued an <a href="#">“Interim Final Rule”</a> to address the threats from terrorist attacks on chemical facilities. The Department <a href="#">plans</a> to issue a proposed rule to update and strengthen these requirements pursuant to a 2014 law that allows DHS to mature the program. The initial Interim Final Rule published and made effective by DHS in 2007 was considered “economically significant” and would have fallen under the RAA’s purview. <b>Had the RAA in in place, its 180-day expiration of Interim Final Rules would have killed this measure.</b> The contemplated strengthening rule also could be delayed or blocked by the RAA.	This program mandates that high-risk chemical facilities in the United States develop and implement security plans satisfying risk-based performance standards established by DHS. Strengthening of such performance standards could be put at risk by the RAA.
<b>Terrorism and transportation security (Transportation Security Administration)</b>	<b>TSA has proposed a rule to strengthen security training for surface transportation employees such as certain passenger rail operators.</b> This rule was considered a significant regulatory action by TSA but not “economically” significant. Thus, it may not qualify as a major rule under the RAA. At very least however, the RAA brings substantive and legal uncertainty because it is unclear how rules that are significant but not economically significant would be affected. Additionally, all proposed rules will be subject to at least some additional burdens and legal uncertainties under the RAA (see footnote 1).	The rules are needed to ensure higher-risk public transportation agencies (including rail mass transit and bus systems), railroad carriers (freight and passenger), and over-the-road bus operators to conduct security training for employees.
<b>Fighting the opioid epidemic</b>	<b>Drug companies or others could easily fight any measures to fight this public health crisis under the bill.</b> Any major rule could be readily tied up and potentially killed by the RAA.	In 2015, 33,000 Americans died of opioid overdoses. While some states have adopted <a href="#">prescription drug</a>

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		<p><a href="#">monitoring programs</a> and “pill mill” laws to crack down on those to prescribe and sell inordinate amounts of opioid pills, <a href="#">FDA has been criticized</a> for doing too little. <a href="#">DEA established quotas</a> but they are very high and have allowed a huge increase in manufacturing of opioids subject to widespread abuse like oxycodone</p>
<p><b>Protecting &amp; Employing Persons with Disabilities</b></p>	<p>The Department of Justice issued <a href="#">a rule</a> in 2016 to <b>ensure protection under the Americans with Disabilities Act Amendments Act of individuals with cancer, diabetes, epilepsy, attention deficit hyperactivity disorder, learning disabilities and other disabilities</b>. While this rule was not considered “economically significant,” it could still fall victim to some the RAA’s burdens. For even non-major rules, the RAA would require agencies to consider counterproposals offered by opponents of the rule. Consideration of those proposals would also be subject to judicial review if an opponent contended that the agency didn’t consider the counterproposal thoroughly enough. Other RAA impediments also still apply (see footnote 1)</p> <p>Moreover, the Equal Employment Opportunity Commission (EEOC) <a href="#">proposed a rule</a> to <b>require Federal agencies and departments to be "model employers" of individuals with disabilities</b>. While this rule was not considered economically significant, as noted above, it could still fall victim to some the RAA’s burdens (see footnote 1)</p>	<p>The rules for federally assisted programs and activities were amended to incorporate changes adopted by the Americans with Disabilities Act Amendments Act. Congress passed the ADAAA in response to several Supreme Court decisions that narrowly interpreted the ADA’s definition of disability, leading ultimately to the exclusion from coverage of individuals with cancer, diabetes, epilepsy, attention deficit hyperactivity disorder, learning disabilities and other disabilities.</p> <p>The EEOC proposed rule includes a more detailed explanation of how Federal agencies and departments should give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities.</p>