



## H.R. 3438 – REVIEW Act of 2015 (Rep. Marino, R-PA)

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### FLOOR SCHEDULE:

Expected to be considered on September 21, 2016 under a structured [rule](#).

The rule would provide suspension authority for the legislative days of Thursday, September 22, and Friday, September 23. Under Clause 1 of Rule 24, it is only in order to suspend the rules on Monday, Tuesday, and Wednesdays, as well as the last six days of a session of Congress.

### TOPLINE SUMMARY:

[H.R. 3438](#) would require a federal agency to postpone the effective start date of any high-impact rule, defined as a rule that has an annual cost of more than \$1 billion, for either 60 days, or the period delineated by the authorizing statute, if provided, pending judicial review.

### COST:

The Congressional Budget Office (CBO) [estimates](#) that a delay in implementing regulations could affect spending subject to appropriation, revenues, and direct spending, though they are unable to determine how much.

### CONSERVATIVE CONCERNS:

There are no substantive concerns.

- **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:

Following the 60-day delay, if no one seeks judicial review, a high-impact rule could then take effect. The Office of Information and Regulatory Affairs would be responsible for assessing the annual cost to the economy of a rule.

According to the committee [report](#), though courts have the ability to issue judicial stays preventing regulations from taking effect when challenged by the public, they are increasingly reluctant to do so, with summary denial of requests frequently issued. Because courts are hesitant to issue stays, it reduces the disincentive for agencies not to issue overly costly or burdensome rules. Presently, pending judicial review, courts will allow agencies to continue to require rule compliance. This creates a burdensome situation under which agencies are able to use the threat of overwhelming compliance costs during judicial review to force regulated entities to effectively accept a costly rulemaking, regardless of the underlying merits.

Regulated industries frequently comply, as they are unable to invest in updating infrastructure and processes to meet compliance requirements and challenge ill-conceived rules.

Allowing for the possibility of a stay pending judicial review is consistent with past Executive Orders, including a Clinton-era Executive [Order](#) which highlighted the need for care when considering rules amounting to over \$100 million per year.

This legislation comes in response to major regulatory agency actions costing tax payers billions of dollars. Though in the past billion dollar regulations were a rarity, under the Obama Administration these mega-rules have become more frequent, imposing annual costs of up to \$65.1 billion.

A Committee Report can be found [here](#).

#### **AMENDMENTS:**

1. [Rep. Cicilline](#) (D-RI) – This amendment would exempt from the requirements of this legislation any rule that would reduce the cost of healthcare for individuals over 65 years of age.
2. [Rep. DelBene](#) (D-WA) – This amendment would exempt from the requirements of this legislation any rule that pertains to increasing the affordability of higher education.

#### **COMMITTEE ACTION:**

H.R. 3438 was introduced on August 4, 2015 and was referred to the House Committee on the Judiciary, where it was reported amended on September 13, 2016.

#### **ADMINISTRATION POSITION:**

A Statement of Administration Policy can be found [here](#).

#### **CONSTITUTIONAL AUTHORITY:**

Congress has the power to enact this legislation pursuant to the following: Article I, Section 1, Clause 1 of the U.S. Constitution, in that the legislation concerns the exercise of legislative powers generally granted to Congress, including the exercise of those powers when delegated by Congress to the Executive. Article I, Section 8, Clause 18 of the U.S. Constitution in that the legislation exercises legislative power granted to Congress by that clause "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Office thereof;" and Article III, Section 1, Clause 1, Sentence 1, and Section 2, Clause 1, of the Constitution in that the legislation defines or affects judicial powers and cases that are subject to legislation by Congress.

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