

116TH CONGRESS
2D SESSION

S. 3208

To improve agency rulemaking, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2020

Mr. PORTMAN introduced the following bill; which was read twice and referred
to the Committee on Homeland Security and Governmental Affairs

A BILL

To improve agency rulemaking, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Account-
5 ability Act”.

6 **SEC. 2. DEFINITIONS.**

7 Section 551 of title 5, United States Code, is amend-
8 ed—

9 (1) in paragraph (5), by striking “rule making”
10 and inserting “rulemaking”;

11 (2) in paragraph (6), by striking “rule making”
12 and inserting “rulemaking”;

1 (3) in paragraph (13), by striking “and” at the
2 end;

3 (4) in paragraph (14), by striking the period at
4 the end and inserting a semicolon; and

5 (5) by adding at the end the following:

6 “(15) ‘guidance’ means an agency statement of
7 general applicability that—

8 “(A) is not intended to have the force and
9 effect of law; and

10 “(B) sets forth a policy on a statutory,
11 regulatory, or technical issue or an interpreta-
12 tion of a statutory or regulatory issue;

13 “(16) ‘high-impact rule’ means any rule that
14 the Administrator determines is likely to cause an
15 annual effect on the economy of \$500,000,000 or
16 more, adjusted once every 5 years to reflect in-
17 creases in the Consumer Price Index for All Urban
18 Consumers, as published by the Bureau of Labor
19 Statistics of the Department of Labor;

20 “(17) ‘major guidance’ means guidance that the
21 Administrator finds is likely to lead to—

22 “(A) an annual effect on the economy of
23 \$100,000,000 or more, adjusted once every 5
24 years to reflect increases in the Consumer Price
25 Index for All Urban Consumers, as published

1 by the Bureau of Labor Statistics of the De-
2 partment of Labor;

3 “(B) a major increase in costs or prices for
4 consumers, individual industries, Federal,
5 State, local, or Tribal government agencies, or
6 geographic regions; or

7 “(C) significant adverse effects on competi-
8 tion, employment, investment, productivity, in-
9 novation, public health and safety, or the ability
10 of United States-based enterprises to compete
11 with foreign-based enterprises in domestic and
12 export markets;

13 “(18) ‘major rule’ means any rule that the Ad-
14 ministrator determines is likely to cause—

15 “(A) an annual effect on the economy of
16 \$100,000,000 or more, adjusted once every 5
17 years to reflect increases in the Consumer Price
18 Index for All Urban Consumers, as published
19 by the Bureau of Labor Statistics of the De-
20 partment of Labor;

21 “(B) a major increase in costs or prices for
22 consumers, individual industries, Federal,
23 State, local, or Tribal government agencies, or
24 geographic regions; or

1 “(C) significant adverse effects on competi-
 2 tion, employment, investment, productivity, in-
 3 novation, public health and safety, or the ability
 4 of United States-based enterprises to compete
 5 with foreign-based enterprises in domestic and
 6 export markets;

7 “(19) ‘Office of Information and Regulatory Af-
 8 fairs’ means the office established under section
 9 3503 of title 44 and any successor to that office;
 10 and

11 “(20) ‘Administrator’ means the Administrator
 12 of the Office of Information and Regulatory Af-
 13 fairs.”.

14 **SEC. 3. RULEMAKING.**

15 Section 553 of title 5, United States Code, is amend-
 16 ed—

17 (1) in the section heading, by striking “**Rule**
 18 **making**” and inserting “**Rulemaking**”;

19 (2) in subsection (a), by striking “(a) This sec-
 20 tion applies” and inserting the following:

21 “(a) APPLICABILITY.—This section applies”; and

22 (3) by striking subsections (b) through (e) and
 23 inserting the following:

1 “(b) RULEMAKING CONSIDERATIONS.—In a rule-
2 making, an agency shall consider, in addition to other ap-
3 plicable considerations, the following:

4 “(1) The legal authority under which a rule
5 may be proposed, including whether rulemaking is
6 required by statute or is within the discretion of the
7 agency.

8 “(2) The nature and significance of the problem
9 the agency intends to address with a rule.

10 “(3) Whether existing Federal laws or rules
11 have created or contributed to the problem the agen-
12 cy may address with a rule and, if so, whether those
13 Federal laws or rules could be amended or rescinded
14 to address the problem in whole or in part.

15 “(4) A reasonable number of alternatives for or
16 to a new rule, with the consideration of 3 alter-
17 natives presumed to be reasonable, that—

18 “(A) meet the objectives of the statutory
19 provision on which the rulemaking relies, in-
20 cluding substantial alternatives or other re-
21 sponses identified by the agency or by inter-
22 ested persons; and

23 “(B) consider not only mandating par-
24 ticular conduct or manners of compliance, but
25 also—

1 “(i) specifying performance objectives;

2 “(ii) establishing economic incentives,
3 including marketable permits, to encourage
4 desired behavior;

5 “(iii) establishing disclosure require-
6 ments that will provide information upon
7 which choices can be made by the public;
8 or

9 “(iv) adopting other means of meeting
10 the objectives of the statutory provision on
11 which the rulemaking relies without man-
12 dating particular conduct or manners of
13 compliance.

14 “(5) For any major rule or high-impact rule,
15 unless prohibited by law, the potential costs and
16 benefits associated with potential alternative rules
17 and other responses considered under paragraph (4),
18 including quantitative and qualitative analyses of—

19 “(A) the direct costs and benefits;

20 “(B) the nature and degree of risks ad-
21 dressed by the rule and the countervailing risks
22 that might be posed by agency action; and

23 “(C) to the extent practicable, the cumu-
24 lative costs and benefits, and an analysis of the
25 effects that the rule is anticipated to have on

1 entities that purchase products or services
 2 from, sell products or services to, or otherwise
 3 conduct business with entities to which the rule
 4 will apply.

5 “(c) NOTICE OF PROPOSED RULEMAKING.—

6 “(1) IN GENERAL.—If an agency determines
 7 that the objectives of the agency require the agency
 8 to issue a rule, the agency shall—

9 “(A) submit a notice of proposed rule-
 10 making to the Administrator for review;

11 “(B) refrain from publishing the notice
 12 until the Administrator determines that review
 13 by the Administrator has concluded; and

14 “(C) at the conclusion of review by the Ad-
 15 ministrator, publish a notice of proposed rule-
 16 making in the Federal Register, which shall in-
 17 clude—

18 “(i) a statement of the time, place,
 19 and nature of any public rulemaking pro-
 20 ceedings;

21 “(ii) a reference to the legal authority
 22 under which the rule is proposed, including
 23 the specific statutory provision on which
 24 the rulemaking relies;

25 “(iii) the text of the proposed rule;

1 “(iv) a summary of information
2 known to the agency concerning the con-
3 siderations described in subsection (b); and

4 “(v) where otherwise consistent with
5 applicable law, for any major rule or high-
6 impact rule—

7 “(I) a reasoned preliminary ex-
8 planation regarding how—

9 “(aa) the proposed rule
10 meets the objectives of the statu-
11 tory provision on which the rule-
12 making relies; and

13 “(bb) the benefits of the
14 proposed rule justify the costs;

15 “(II) a discussion of—

16 “(aa) the costs and benefits
17 of alternatives considered by the
18 agency under subsection (b)(4);

19 “(bb) whether the alter-
20 natives considered by the agency
21 under subsection (b)(4) meet the
22 objectives of the statutory provi-
23 sion on which the rulemaking re-
24 lies; and

1 “(cc) the reasons why the
2 agency did not propose an alter-
3 native considered by the agency
4 under subsection (b)(4); and

5 “(III) a solicitation of public
6 comment, including on all issues and
7 alternatives discussed under sub-
8 clauses (I) and (II) and subsection
9 (l)(1)(A).

10 “(2) ACCESSIBILITY.—

11 “(A) IN GENERAL.—Not later than the
12 date on which an agency publishes a notice of
13 proposed rulemaking under paragraph (1), all
14 studies, models, scientific literature, and other
15 information developed or relied upon by the
16 agency, and actions taken by the agency to ob-
17 tain that information, in connection with the
18 determination of the agency to propose the rule
19 that is the subject of the rulemaking shall be
20 placed in the docket for the proposed rule and
21 made accessible to the public.

22 “(B) INFORMATION CONTROLLED BY NON-
23 GOVERNMENTAL PERSON.—With respect to any
24 information to which a nongovernmental person
25 holds a legal right to prohibit or limit reproduc-

tion, distribution, or public display, the information shall be—

“(i) placed in the docket through citation or incorporation by reference, including a specification of the identity of the nongovernmental person who holds a legal right to prohibit or limit reproduction, distribution, or public display of the information and the means by which a member of the public may request a full copy of the information from that holder; and

“(ii) considered made accessible to the public after a placement described in clause (i), provided that the nongovernmental person who holds a legal right to prohibit or limit reproduction, distribution, or public display of the information makes the information reasonably available upon request in a timely manner to any member of the public who requests a copy of the information.

“(C) EXCEPTION.—Subparagraphs (A) and (B) shall not apply with respect to information that is exempt from disclosure under section 552(b).

1 “(3) INFORMATION QUALITY.—If an agency
2 proposes a rule that rests upon scientific, technical,
3 or economic information, the agency shall—

4 “(A) propose the rule on the basis of the
5 best reasonably available scientific, technical, or
6 economic information; and

7 “(B) to the maximum extent practicable,
8 use that information in compliance with the
9 guidelines issued under section 515 of the
10 Treasury and General Government Appropria-
11 tions Act, 2001 (Public Law 106–554; 114
12 Stat. 2763A–154).

13 “(4) PUBLIC COMMENT.—

14 “(A) IN GENERAL.—After publishing a no-
15 tice of proposed rulemaking under paragraph
16 (1), an agency shall provide interested persons
17 an opportunity to participate in the rulemaking
18 through the submission of written material,
19 data, views, or arguments with or without op-
20 portunity for oral presentation, except that—

21 “(i) if a public hearing is convened
22 under subsection (e), reasonable oppor-
23 tunity for oral presentation shall be pro-
24 vided at the public hearing as provided in
25 subsection (e); and

1 “(ii) when, other than as provided in
2 subsection (e), a rule is required by statute
3 to be made on the record after opportunity
4 for an agency hearing—

5 “(I) sections 556 and 557 shall
6 apply; and

7 “(II) the petition procedures of
8 subsection (e) shall not apply.

9 “(B) TIMELINE.—

10 “(i) IN GENERAL.—Subject to sub-
11 paragraph (C), an agency shall provide not
12 less than 60 days, or, with respect to a
13 proposed major rule or a proposed high-im-
14 pact rule, not less than 90 days, for inter-
15 ested persons to submit written material,
16 data, views, or arguments under subpara-
17 graph (A).

18 “(ii) ADEQUATE REVIEW PERIOD.—If
19 a proposed rule relies on information
20 placed in the docket through citation or in-
21 corporation by reference as described in
22 paragraph (3)(B), the comment period re-
23 quired under clause (i) shall be adequate
24 to allow interested persons to receive and

1 review that information to inform their
2 submission.

3 “(C) RESPONSIVE COMMENT PERIOD FOR
4 MAJOR AND HIGH-IMPACT RULES.—With re-
5 spect to a proposed major rule or a proposed
6 high-impact rule, an interested person who
7 made a submission under subparagraph (A)
8 during the comment period under subparagraph
9 (B) with respect to the rule may, during the pe-
10 riod beginning on the day after the date on
11 which that comment period closes and ending
12 on the date that is 30 days after that day, re-
13 spond to any other submission made by any
14 other interested person under subparagraph (A)
15 during the initial comment period.

16 “(D) ACCESSIBILITY.—All comments and
17 responses submitted under this paragraph shall
18 be promptly placed in the docket and made ac-
19 cessible to the public.

20 “(5) CHANGE OF CLASSIFICATION AFTER PUB-
21 LICATION OF NOTICE.—If, after an agency submits
22 for review and publishes the notice of proposed rule-
23 making required under paragraph (1), a proposed
24 rule is determined to be a major rule or a high-im-
25 pact rule, the agency shall—

1 “(A) publish a notice in the Federal Reg-
2 ister with respect to the change of the classi-
3 fication of the rule; and

4 “(B) allow interested persons an additional
5 opportunity of not less than 30 days to com-
6 ment on—

7 “(i) the rule; and

8 “(ii) the change of the classification of
9 the rule.

10 “(6) PROHIBITION ON CERTAIN COMMUNICA-
11 TIONS.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), after an agency publishes a
14 notice of proposed rulemaking required under
15 paragraph (1), or after an agency publishes a
16 notice of initiation of rulemaking under sub-
17 section (d)(1)(B), the agency, and any indi-
18 vidual acting in an official capacity on behalf of
19 the agency, may not communicate, and a person
20 who receives Federal funds from the agency
21 may not use those funds to communicate,
22 through written, oral, electronic, or other
23 means, to the public with respect to the pro-
24 posed rule in a manner that—

1 “(i) directly advocates, in support of
2 or against the proposed rule, for the sub-
3 mission of information that will form part
4 of the record for the proposed rule;

5 “(ii) appeals to the public, or solicits
6 a third party, to undertake advocacy in
7 support of or against the proposed rule; or

8 “(iii) is directly or indirectly for the
9 purpose of publicity or propaganda within
10 the United States in a manner that Con-
11 gress has not authorized.

12 “(B) EXCEPTION.—The prohibition under
13 subparagraph (A) shall not apply to a commu-
14 nication that requests comments on, or provides
15 information regarding, a proposed rule in an
16 impartial manner.

17 “(d) INITIATION OF RULEMAKING FOR MAJOR AND
18 HIGH-IMPACT RULES.—

19 “(1) NOTICE FOR MAJOR AND HIGH-IMPACT
20 RULES.—When an agency determines to initiate a
21 rulemaking that may result in a major rule or a
22 high-impact rule, the agency shall—

23 “(A) establish an electronic docket for that
24 rulemaking, which may have a physical counter-
25 part; and

1 “(B) publish a notice of initiation of rule-
2 making in the Federal Register, which shall—

3 “(i) briefly describe the subject and
4 objectives of, and the problem to be solved
5 by, the rule;

6 “(ii) refer to the legal authority under
7 which the rule would be proposed, includ-
8 ing the specific statutory provision that au-
9 thorizes the rulemaking;

10 “(iii) invite interested persons to pro-
11 pose alternatives and other ideas regarding
12 how best to accomplish the objectives of
13 the agency in the most effective manner;

14 “(iv) indicate how interested persons
15 may submit written material for the dock-
16 et; and

17 “(v) appear in the Federal Register
18 not later than 90 days before the date on
19 which the agency publishes a notice of pro-
20 posed rulemaking for the rule.

21 “(2) ACCESSIBILITY.—All information provided
22 to the agency under paragraph (1) shall be promptly
23 placed in the docket and made accessible to the pub-
24 lic, unless the information—

1 “(A) is information to which the submitter
 2 does not hold a legal right to authorize disclo-
 3 sure; or

4 “(B) is exempt from disclosure under sec-
 5 tion 552(b).

6 “(3) APPLICABILITY.—With respect to the al-
 7 ternatives and other ideas proposed under paragraph
 8 (1)(B)(iii)—

9 “(A) the alternatives and other ideas are
 10 for the benefit of—

11 “(i) the agency receiving the alter-
 12 natives and other ideas; and

13 “(ii) the public; and

14 “(B) the agency receiving the alternatives
 15 and other ideas may respond to the alternatives
 16 and other ideas.

17 “(4) TIMETABLE.—

18 “(A) IN GENERAL.—After considering any
 19 written material submitted by interested per-
 20 sons under paragraph (1), if an agency deter-
 21 mines to proceed with a rulemaking for a major
 22 rule or a high-impact rule, the agency proposing
 23 the rule shall establish a timetable for the rule-
 24 making that—

1 “(i) contains intermediate completion
2 dates for actions of the agency, includ-
3 ing—

4 “(I) the anticipated date on
5 which the agency shall publish the no-
6 tice required under subsection (c)(1)
7 with respect to the rule; and

8 “(II) the duration of the com-
9 ment period required under subsection
10 (c)(4), including the date on which the
11 comment period shall end; and

12 “(ii) includes a final completion date
13 for actions by the agency.

14 “(B) PUBLICATION.—The timetable re-
15 quired under subparagraph (A) shall be pub-
16 lished in the electronic docket established under
17 paragraph (1)(A) with respect to the rule-
18 making.

19 “(C) CONSIDERATION OF FACTORS.—In
20 establishing the timetable required under sub-
21 paragraph (A), an agency shall consider rel-
22 evant factors, including—

23 “(i) the size and complexity of the
24 rulemaking;

1 “(ii) the resources available to the
2 agency;

3 “(iii) the national significance of the
4 rulemaking; and

5 “(iv) all statutory requirements that
6 govern the timing of the rulemaking.

7 “(D) REPORT REQUIRED.—

8 “(i) IN GENERAL.—An agency that
9 fails to meet an intermediate or final com-
10 pletion date for an action established under
11 subparagraph (A) shall submit to Congress
12 and the Director of the Office of Manage-
13 ment and Budget a report regarding why
14 the agency failed to meet the completion
15 date.

16 “(ii) CONTENTS; PUBLICATION IN
17 FEDERAL REGISTER.—A report submitted
18 under clause (i) shall—

19 “(I) include an amended time-
20 table for the rulemaking; and

21 “(II) be published—

22 “(aa) in the Federal Reg-
23 ister; and

24 “(bb) in the electronic dock-
25 et established under paragraph

1 (1)(A) with respect to the rule-
2 making.

3 “(E) CHANGES TO INTERMEDIATE DATES
4 PUBLISHED IN ELECTRONIC DOCKET.—If an
5 agency changes an intermediate completion date
6 for an action of the agency established under
7 subparagraph (A)(i), the agency shall publish in
8 the electronic docket established under para-
9 graph (1)(A)—

10 “(i) the updated completion date for
11 the action; and

12 “(ii) a brief explanation regarding the
13 reason for the change to the completion
14 date.

15 “(5) NOTICE OF DETERMINATION OF OTHER
16 AGENCY COURSE.—

17 “(A) IN GENERAL.—If, after publishing
18 the notice required under paragraph (1), an
19 agency determines not to issue a major rule or
20 a high-impact rule, the agency shall—

21 “(i) publish a notice of determination
22 of other agency course; and

23 “(ii) if the agency intends to issue a
24 rule, comply with the procedures required
25 under subsection (c).

1 “(B) CONTENTS.—A notice of determina-
 2 tion of other agency course published under
 3 subparagraph (A)(i) shall include—

4 “(i) a description of the alternative re-
 5 sponse the agency has determined to
 6 adopt; and

7 “(ii) if the agency intends to issue a
 8 rule, any information required under sub-
 9 section (c).

10 “(e) PUBLIC HEARING FOR HIGH-IMPACT RULES.—

11 “(1) PETITION FOR PUBLIC HEARING.—

12 “(A) IN GENERAL.—Before the date on
 13 which the comment period closes with respect to
 14 a proposed high-impact rule, an interested per-
 15 son may petition the agency that proposed the
 16 rule to hold a public hearing in accordance with
 17 this subsection.

18 “(B) GRANTING AND DENIAL OF PETI-
 19 TION.—

20 “(i) GRANTING OF PETITION.—Not
 21 later than 30 days after the date on which
 22 an agency receives a petition submitted
 23 under subparagraph (A) with respect to a
 24 rule, the agency shall grant the petition, in

1 whole or in part, if the petition shows
2 that—

3 “(I) the proposed rule is based
4 on conclusions with respect to 1 or
5 more specific scientific, technical, eco-
6 nomic, or other complex factual issues
7 that are genuinely disputed;

8 “(II) with respect to a rule that
9 the agency is required to reissue not
10 less frequently than once every 3
11 years, the interested person submit-
12 ting the petition could not have raised
13 the disputed factual issues described
14 in subclause (I) during the 5-year pe-
15 riod preceding the date on which the
16 petition is submitted; and

17 “(III) the resolution of the dis-
18 puted factual issues described in sub-
19 clause (I) would likely have an effect
20 on—

21 “(aa) the costs and benefits
22 of the proposed rule; or

23 “(bb) whether the proposed
24 rule achieves relevant statutory
25 objectives, including the objec-

1 tives of the statutory provision on
2 which the rulemaking relies.

3 “(ii) DENIAL OF PETITION.—If an
4 agency denies a petition submitted under
5 subparagraph (A) in whole or in part, the
6 agency shall include in the rulemaking
7 record an explanation for the denial that is
8 sufficient for judicial review, including—

9 “(I) findings by the agency
10 that—

11 “(aa) there is no genuine
12 dispute as to the factual issues
13 raised by the petition; or

14 “(bb) with respect to a rule
15 that the agency is required to re-
16 issue not less frequently than
17 once every 3 years, the interested
18 person submitting the petition
19 could have raised the disputed
20 factual issues in the petition dur-
21 ing the 5-year period preceding
22 the date on which the petition is
23 submitted; and

24 “(II) a reasoned determination
25 by the agency that the factual issues

1 raised by the petition, even if subject
2 to genuine dispute and not subject to
3 subclause (I)(bb), will not have an ef-
4 fect on—

5 “(aa) the costs and benefits
6 of the proposed rule; or

7 “(bb) whether the proposed
8 rule achieves relevant statutory
9 objectives, including the objec-
10 tives of the statutory provision on
11 which the rulemaking relies.

12 “(iii) INCLUSION IN THE RECORD.—A
13 petition submitted under subparagraph (A)
14 with respect to a high-impact rule and the
15 decision of an agency with respect to the
16 petition shall be included in the rulemaking
17 record.

18 “(2) NOTICE OF HEARING.—Not later than 45
19 days before the date on which a hearing is held
20 under this subsection, an agency shall publish in the
21 Federal Register a notice specifying—

22 “(A) the proposed rule to be considered at
23 the hearing; and

24 “(B) the factual issues to be considered at
25 the hearing.

1 “(3) HEARING REQUIREMENTS.—

2 “(A) LIMITED NATURE OF HEARING.—A
3 hearing held under this subsection shall be lim-
4 ited to—

5 “(i) the specific factual issues raised
6 in a petition granted in whole or in part
7 under paragraph (1); and

8 “(ii) any other factual issues the reso-
9 lution of which an agency, in the discretion
10 of the agency, determines will advance con-
11 sideration by the agency of the proposed
12 rule.

13 “(B) PROCEDURES.—

14 “(i) BURDEN OF PROOF.—Except as
15 otherwise provided by statute, a proponent
16 of a rule has the burden of proof in a hear-
17 ing held under this subsection.

18 “(ii) ADMISSION OF EVIDENCE.—In a
19 hearing held under this subsection, any
20 documentary or oral evidence may be re-
21 ceived, except that an agency, as a matter
22 of policy, shall provide for the exclusion of
23 immaterial or unduly repetitious evidence.

24 “(iii) ADOPTION OF RULES GOV-
25 ERNING HEARINGS.—To govern a hearing

1 held under this subsection, each agency
2 shall adopt rules that provide for—

3 “(I) the appointment of an agen-
4 cy official or administrative law judge
5 to preside at the hearing;

6 “(II) the presentation by inter-
7 ested parties of relevant documentary
8 or oral evidence, unless the evidence is
9 immaterial or unduly repetitious;

10 “(III) a reasonable and adequate
11 opportunity for cross-examination by
12 interested parties concerning genu-
13 inely disputed factual issues raised by
14 the petition, provided that, in the case
15 of multiple interested parties with the
16 same or similar interests, the agency
17 may require the use of common coun-
18 sel where the common counsel may
19 adequately represent the interests that
20 will be significantly affected by the
21 proposed rule; and

22 “(IV) when appropriate, and to
23 the extent practicable, the consolida-
24 tion of proceedings with respect to

1 multiple petitions submitted under
2 this subsection into a single hearing.

3 “(C) RECORD OF HEARING.—A transcript
4 of testimony and exhibits, together with all pa-
5 pers and requests filed in the hearing, shall
6 constitute the exclusive record for decision of
7 the factual issues addressed in a hearing held
8 under this subsection.

9 “(4) JUDICIAL REVIEW.—

10 “(A) IN GENERAL.—Failure to petition for
11 a hearing under this subsection shall not pre-
12 clude judicial review of any claim that could
13 have been raised in the hearing petition or at
14 the hearing.

15 “(B) TIMING OF JUDICIAL REVIEW.—
16 There shall be no judicial review of the disposi-
17 tion of a petition by an agency under this sub-
18 section until judicial review of the final action
19 of the agency.

20 “(f) FINAL RULES.—

21 “(1) NET BENEFITS OF MAJOR OR HIGH-IM-
22 PACT RULE.—

23 “(A) IN GENERAL.—Except as provided in
24 subparagraph (B), in a rulemaking for a major
25 rule or a high-impact rule, an agency shall

1 adopt the alternative considered under sub-
 2 section (b)(5) that maximizes net benefits, tak-
 3 ing into consideration only the costs and bene-
 4 fits that arise within the scope of the statutory
 5 provision that authorizes the rulemaking.

6 “(B) EXCEPTIONS.—In a rulemaking for a
 7 major rule or a high-impact rule, an agency
 8 may adopt an alternative other than as required
 9 under subparagraph (A) only if—

10 “(i) the Administrator approves the
 11 adoption by the agency of the alternative;
 12 and

13 “(ii) the alternative is adopted to—

14 “(I) account for costs or benefits
 15 that cannot be quantified, including
 16 costs or benefits related to constitu-
 17 tional or civil rights, provided that the
 18 agency identifies all such costs and
 19 benefits and explains why those costs
 20 and benefits justify the adoption of
 21 the alternative; or

22 “(II) achieve additional benefits
 23 or cost reductions, provided that the
 24 agency—

25 “(aa) identifies—

1 “(AA) all such addi-
 2 tional benefits and the asso-
 3 ciated costs of those bene-
 4 fits; and

5 “(BB) all such cost re-
 6 ductions and the associated
 7 benefits of those cost reduc-
 8 tions; and

9 “(bb) explains why—

10 “(AA) the additional
 11 benefits justify the addi-
 12 tional costs; or

13 “(BB) the additional
 14 cost reductions justify any
 15 benefits foregone.

16 “(C) RULE OF CONSTRUCTION.—Nothing
 17 in subparagraph (A) may be construed to pre-
 18 clude an agency from including in an alter-
 19 native adopted pursuant to such subparagraph
 20 changes made as a result of agency analysis or
 21 review performed under chapter 6 of this title.

22 “(2) PUBLICATION OF NOTICE OF FINAL RULE-
 23 MAKING.—After submitting a final rule to the Ad-
 24 ministrator for review and obtaining a certification
 25 from the Administrator that the review has con-

1 cluded, the agency shall publish a notice of final
2 rulemaking in the Federal Register, which shall in-
3 clude—

4 “(A) a concise, general statement of the
5 basis and purpose of the rule and a reference
6 to the legal authority under which the rule is
7 made, including the specific statutory provision
8 on which the rulemaking relies;

9 “(B) a reasoned determination by the
10 agency regarding the considerations described
11 in subsection (b);

12 “(C) a response to each significant issue
13 raised in the comments on the proposed rule;
14 and

15 “(D) with respect to a major rule or a
16 high-impact rule, a reasoned determination by
17 the agency that—

18 “(i) the benefits of the rule advance
19 the relevant objectives of the statutory pro-
20 vision on which the rulemaking relies and
21 justify the costs of the rule; and

22 “(ii)(I) no other alternative considered
23 would achieve the relevant objectives of the
24 statutory provision on which the rule-
25 making relies in a manner that more

1 greatly maximizes net benefits as required
2 under paragraph (1)(A); or

3 “(II) the adoption by the agency of a
4 more costly or less costly rule complies
5 with paragraph (1)(B).

6 “(3) INFORMATION QUALITY.—If an agency
7 rulemaking rests upon scientific, technical, or eco-
8 nomic information, the agency shall—

9 “(A) adopt a final rule on the basis of the
10 best reasonably available scientific, technical, or
11 economic information; and

12 “(B) to the maximum extent practicable,
13 use that information in compliance with the
14 guidelines issued under section 515 of the
15 Treasury and General Government Appropria-
16 tions Act, 2001 (Public Law 106–554; 114
17 Stat. 2763A–154).

18 “(4) ACCESSIBILITY.—

19 “(A) IN GENERAL.—Not later than the
20 date on which an agency publishes a notice of
21 final rulemaking under paragraph (2), all stud-
22 ies, models, scientific literature, and other in-
23 formation developed or relied upon by the agen-
24 cy, and actions taken by the agency to obtain
25 that information, in connection with the deter-

1 mination of the agency to finalize the rule that
2 is the subject of the rulemaking shall be placed
3 in the docket for the rule and made accessible
4 to the public.

5 “(B) INFORMATION CONTROLLED BY NON-
6 GOVERNMENTAL PERSON.—With respect to any
7 information to which a nongovernmental person
8 holds a legal right to prohibit or limit reproduc-
9 tion, distribution, or public display, the infor-
10 mation shall be—

11 “(i) placed in the docket through cita-
12 tion or incorporation by reference, includ-
13 ing a specification of the identity of the
14 nongovernmental person who holds a legal
15 right to prohibit or limit reproduction, dis-
16 tribution, or public display of the informa-
17 tion and the means by which a member of
18 the public may request a full copy of the
19 information from that holder; and

20 “(ii) considered made accessible to the
21 public after a placement described in
22 clause (i), provided that the nongovern-
23 mental person who holds a legal right to
24 prohibit or limit reproduction, distribution,
25 or public display of the information makes

1 the information reasonably available upon
2 request in a timely manner.

3 “(C) EXCEPTION.—Subparagraphs (A)
4 and (B) shall not apply with respect to informa-
5 tion that is exempt from disclosure under sec-
6 tion 552(b).

7 “(5) RULES ADOPTED AT THE END OF A PRESI-
8 DENTIAL ADMINISTRATION.—

9 “(A) IN GENERAL.—During the 60-day pe-
10 riod beginning on a transitional inauguration
11 day (as defined in section 3349a), with respect
12 to any final rule that had been placed on file
13 for public inspection by the Office of the Fed-
14 eral Register or published in the Federal Reg-
15 ister as of the date of the inauguration, but
16 which had not become effective by the date of
17 the inauguration, the agency issuing the rule
18 may, by order, delay the effective date of the
19 rule for not more than 90 days for the purpose
20 of obtaining public comment on whether—

21 “(i) the rule should be amended or re-
22 scinded; or

23 “(ii) the effective date of the rule
24 should be further delayed.

1 “(B) OPPORTUNITY FOR COMMENT.—If an
2 agency delays the effective date of a rule under
3 subparagraph (A), the agency shall give the
4 public not less than 30 days to submit com-
5 ments.

6 “(g) APPLICABILITY.—

7 “(1) PRIMACY OF CERTAIN RULEMAKING CON-
8 SIDERATIONS AND PROCEDURES IN OTHER FEDERAL
9 LAWS.—

10 “(A) CONSIDERATIONS.—If a rulemaking
11 is authorized under a Federal law that requires
12 an agency to consider, or prohibits an agency
13 from considering, a factor in a manner that is
14 inconsistent with, or that conflicts with, the re-
15 quirements under this section, for the purposes
16 of this section, the requirement or prohibition,
17 as applicable, in that other Federal law shall
18 apply to the agency in the rulemaking.

19 “(B) PROCEDURAL REQUIREMENTS.—If a
20 rulemaking is authorized under a Federal law
21 that requires an agency to follow or use, or pro-
22 hibits an agency from following or using, a pro-
23 cedure in a manner that is duplicative of, or
24 that conflicts with, a procedural requirement
25 under this section, for the purposes of this sec-

tion, the requirement or prohibition, as applicable, in that other Federal law shall apply to the agency in the rulemaking.

“(2) GUIDANCE AND RULES OF ORGANIZATION.—Except as otherwise provided by law, this section shall not apply to guidance or rules of agency organization, procedure, or practice.

“(3) EXCEPTIONS FOR GOOD CAUSE.—

“(A) FINDING OF GOOD CAUSE.—

“(i) IN GENERAL.—If an agency for good cause finds that compliance with subsection (c), (d), (e), or (f)(2)(B) before issuing a final rule is unnecessary, impracticable, or contrary to the public interest, that subsection shall not apply and the agency may issue the final rule or an interim final rule, as applicable, under subparagraph (B) or (C).

“(ii) INCORPORATION OF GOOD CAUSE FINDING.—If an agency makes a finding under clause (i), the agency shall include that finding and a brief statement with respect to the reasons for that finding in the final rule or interim final rule, as applicable, issued by the agency.

1 “(B) DIRECT FINAL RULES.—

2 “(i) IN GENERAL.—Except as pro-
 3 vided in clause (ii), if an agency makes a
 4 finding under subparagraph (A)(i) that
 5 compliance with subsection (c), (d), (e), or
 6 (f)(2)(B) before issuing a final rule is un-
 7 necessary, the agency shall, before issuing
 8 the final rule—

9 “(I) publish in the Federal Reg-
 10 ister the text of the final rule, the
 11 brief statement required under sub-
 12 paragraph (A)(ii), and a notice of op-
 13 portunity for public comment;

14 “(II) establish a comment period
 15 of not less than 30 days for any inter-
 16 ested person to submit written mate-
 17 rial, data, views, or arguments with
 18 respect to the final rule; and

19 “(III) provide notice of the date
 20 on which the rule will take effect.

21 “(ii) EXCEPTION.—An agency that
 22 made a finding described in clause (i) may
 23 choose not to follow the requirements
 24 under that clause if the agency determines

1 that following the requirements would not
2 expedite the issuance of the final rule.

3 “(iii) ADVERSE COMMENTS.—If an
4 agency receives significant adverse com-
5 ments with respect to a rule during the
6 comment period established under clause
7 (i)(II), the agency shall—

8 “(I) withdraw the notice of final
9 rulemaking published by the agency
10 with respect to the rule; and

11 “(II) complete rulemaking in ac-
12 cordance with subsections (c) through
13 (f), as applicable.

14 “(C) INTERIM FINAL RULES.—

15 “(i) IN GENERAL.—If an agency for
16 good cause finds that compliance with sub-
17 section (c), (d), (e), or (f)(2)(B) before
18 issuing a final rule is impracticable or con-
19 trary to the public interest, the agency
20 shall issue an interim final rule by—

21 “(I) publishing the interim final
22 rule and a request for public comment
23 in the portion of the Federal Register
24 relating to final rules; and

1 “(II) providing a cross-reference
 2 in the portion of the Federal Register
 3 relating to proposed rules that re-
 4 quests public comment with respect to
 5 the rule not later than 60 days after
 6 the rule is published under subclause
 7 (I).

8 “(ii) INTERIM PERIOD.—

9 “(I) IN GENERAL.—Not later
 10 than 180 days after the date on which
 11 an agency issues an interim final rule
 12 under clause (i), the agency shall—

13 “(aa) rescind the interim
 14 rule;

15 “(bb) initiate rulemaking in
 16 accordance with subsections (c)
 17 through (f); or

18 “(cc) take final action to
 19 adopt a final rule.

20 “(II) NO FORCE OR EFFECT.—If,
 21 as of the end of the 180-day period
 22 described in subclause (I), an agency
 23 fails to take an action described in
 24 item (aa), (bb), or (cc) of that sub-
 25 clause, the interim final rule issued by

1 the agency shall have no force or ef-
2 fect.

3 “(4) EXEMPTION FOR MONETARY POLICY.—

4 This section shall not apply to a rulemaking or to
5 guidance that concerns monetary policy proposed or
6 implemented by the Board of Governors of the Fed-
7 eral Reserve System or the Federal Open Market
8 Committee.

9 “(5) RULE OF CONSTRUCTION.—Nothing in
10 this subsection shall be construed to modify, alter, or
11 abridge exclusive rights held pursuant to title 17.

12 “(h) DATE OF PUBLICATION.—A final rule, a direct
13 final rule described in subsection (g)(3)(B), or an interim
14 final rule described in subsection (g)(3)(C) shall be pub-
15 lished not later than 30 days (or, in the case of a major
16 rule or a high-impact rule, not later than 60 days) before
17 the effective date of the rule, except—

18 “(1) for guidance; or

19 “(2) as otherwise provided by an agency for
20 good cause and as published with the rule.

21 “(i) RIGHT TO PETITION AND REVIEW OF RULES.—

22 Each agency shall—

23 “(1) give interested persons the right to petition
24 for the issuance, amendment, or repeal of a rule;
25 and

1 “(2) on a continuing basis, invite interested
2 persons to submit, by electronic means, suggestions
3 for rules that warrant retrospective review and pos-
4 sible modification or repeal.

5 “(j) RULEMAKING GUIDELINES.—

6 “(1) ASSESSMENT OF RULES.—

7 “(A) IN GENERAL.—The Administrator
8 shall establish guidelines regarding rulemaking
9 as follows:

10 “(i) IDENTIFICATION OF NEED FOR
11 RULES.—Guidelines setting forth how
12 needs for rulemaking should be identified,
13 including—

14 “(I) whether rulemaking is made
15 necessary by compelling public need,
16 such as material failures of private
17 markets or public institutions to pro-
18 tect or improve the health and safety
19 of the public, the environment, or the
20 well-being of the public; and

21 “(II) whether rulemaking needs
22 could be lessened by reliance on po-
23 tential State, local, Tribal, or regional
24 regulatory action or other responses

1 that could be taken in lieu of agency
2 action.

3 “(ii) ASSESSMENT OF RULES.—Guide-
4 lines setting forth how the assessment, in-
5 cluding the quantitative and qualitative as-
6 sessment, of proposed and final rules
7 should occur, including how to determine—

8 “(I) the costs and benefits of
9 proposed and final rules and alter-
10 natives to them, including quantifiable
11 and non-quantifiable costs and bene-
12 fits;

13 “(II) whether proposed and final
14 rules maximize net benefits;

15 “(III) estimated impacts on jobs,
16 wages, competition, innovation, and
17 low-income populations;

18 “(IV) other economic issues that
19 are relevant to rulemaking under this
20 section or other sections of this part;
21 and

22 “(V) risk assessments that are
23 relevant to rulemaking under this sec-
24 tion and other sections of this part.

1 “(iii) NUMBERS OF ALTERNATIVES.—
 2 Guidelines regarding when it may be rea-
 3 sonable to consider in a rulemaking more
 4 alternatives than the number presumed to
 5 be reasonable under subsection (b)(4).

6 “(iv) ADOPTION OF ALTERNATIVES
 7 FOR MAJOR OR HIGH-IMPACT RULES.—
 8 Guidelines regarding when it may be ap-
 9 propriate, in a rulemaking for a major or
 10 high-impact rule, to adopt an alternative
 11 final rule under subsection (f)(1)(B).

12 “(v) ADMINISTRATOR REVIEW.—
 13 Guidelines regarding the efficient submis-
 14 sion and review of proposed and final rules
 15 under subsections (c)(1) and (f)(2).”

16 “(B) AGENCY ANALYSIS OF RULES.—

17 “(i) IN GENERAL.—The rigor of the
 18 cost-benefit analysis required or rec-
 19 ommended by the guidelines established
 20 under subparagraph (A) shall be commensurate,
 21 as determined by the Administrator,
 22 with the economic impact of a rule.

23 “(ii) RISK ASSESSMENT GUIDELINES.—Guidelines for a risk assessment
 24

1 described in subparagraph (A)(iv) shall in-
2 clude criteria for—

3 “(I) selecting studies and models;

4 “(II) evaluating and weighing
5 evidence; and

6 “(III) conducting peer reviews.

7 “(C) UPDATING GUIDELINES.—Not less
8 frequently than once every 10 years, the Ad-
9 ministrator shall update the guidelines estab-
10 lished under subparagraph (A) to enable each
11 agency to use the best available techniques to
12 identify, quantify, and evaluate the need for
13 rulemaking and present and future benefits,
14 costs, other economic issues, and risks as objec-
15 tively and accurately as practicable.

16 “(2) SIMPLIFICATION OF RULES.—

17 “(A) ISSUANCE OF GUIDELINES.—The Ad-
18 ministrator shall issue guidelines to promote co-
19 ordination, simplification, and harmonization of
20 agency rules during the rulemaking process.

21 “(B) REQUIREMENTS.—The guidelines
22 issued by the Administrator under subpara-
23 graph (A) shall advise each agency to—

24 “(i) avoid rules that are inconsistent
25 or incompatible with, or duplicative of,

1 other regulations of the agency and those
2 of other agencies; and

3 “(ii) draft the rules of the agency to
4 be simple and easy to understand, with the
5 goal of minimizing the potential for uncer-
6 tainty and litigation arising from the un-
7 certainty.

8 “(3) CONSISTENCY IN RULEMAKING.—

9 “(A) IN GENERAL.—To promote consist-
10 ency in rulemaking, the Administrator shall—

11 “(i) issue guidelines to ensure that
12 rulemaking conducted in whole or in part
13 under procedures specified in provisions of
14 law other than those under this section
15 conform with the procedures set forth in
16 this section to the fullest extent allowed by
17 law; and

18 “(ii) issue guidelines for the adoption
19 of rules under subsection (e)(3)(B)(iii),
20 which shall provide a reasonable oppor-
21 tunity for cross-examination, as described
22 in subsection (e)(3)(B)(iii)(III).

23 “(B) AGENCY ADOPTION OF REGULA-
24 TIONS.—Each agency shall adopt regulations

1 for the conduct of hearings consistent with the
2 guidelines issued under this paragraph.

3 “(k) AGENCY GUIDANCE; PROCEDURES TO ISSUE
4 MAJOR GUIDANCE; AUTHORITY TO ISSUE GUIDELINES
5 FOR ISSUANCE OF GUIDANCE.—

6 “(1) IN GENERAL.—Agency guidance shall—

7 “(A) not be used by an agency to foreclose
8 consideration of issues as to which the guidance
9 expresses a conclusion;

10 “(B) state that the guidance is not legally
11 binding; and

12 “(C) at the time the guidance is issued, or
13 upon request, be made available by the issuing
14 agency to interested persons and the public.

15 “(2) PROCEDURES TO ISSUE MAJOR GUID-
16 ANCE.—Before issuing any major guidance, an agen-
17 cy shall make and document a reasoned determina-
18 tion that—

19 “(A) such guidance is understandable and
20 complies with relevant statutory objectives and
21 regulatory provisions; and

22 “(B) identifies the costs and benefits, in-
23 cluding all costs and benefits to be considered
24 during a rulemaking as required under sub-
25 section (b), of requiring conduct conforming to

1 such guidance and assures that such benefits
2 justify such costs.

3 “(3) ISSUANCE OF UPDATED GUIDANCE.—

4 “(A) IN GENERAL.—The Administrator
5 shall issue updated guidelines for use by agen-
6 cies in the issuance of guidance documents.

7 “(B) REQUIREMENTS.—The guidelines
8 issued by the Administrator under subpara-
9 graph (A) shall advise each agency—

10 “(i) not to issue guidance documents
11 that are inconsistent or incompatible with,
12 or duplicative of, other rules of the agency
13 and those of other agencies;

14 “(ii) to draft the guidance documents
15 of the agency to be simple and easy to un-
16 derstand, with the goal of minimizing the
17 potential for uncertainty and litigation
18 arising from the uncertainty; and

19 “(iii) how to develop and implement a
20 strategy to ensure the proper use of guid-
21 ance by the agency.

22 “(1) MAJOR RULE AND HIGH-IMPACT RULE FRAME-
23 WORKS.—

24 “(1) IN GENERAL.—Beginning on the date that
25 is 180 days after the date of enactment of this sub-

1 section, when an agency publishes in the Federal
2 Register—

3 “(A) a proposed major rule or a proposed
4 high-impact rule, the agency shall include a po-
5 tential framework for assessing the rule, which
6 shall include a general statement of how the
7 agency intends to measure the effectiveness of
8 the rule; or

9 “(B) a final major rule or a final high-im-
10 pact rule, the agency shall include a framework
11 for assessing the rule under paragraph (2),
12 which shall include—

13 “(i) a clear statement of the regu-
14 latory objectives of the rule, including a
15 summary of the benefit and cost of the
16 rule;

17 “(ii) the methodology by which the
18 agency plans to analyze the rule, including
19 metrics by which the agency can meas-
20 ure—

21 “(I) the effectiveness and bene-
22 fits of the rule in producing the regu-
23 latory objectives of the rule; and

1 “(II) the impacts, including any
2 costs, of the rule on regulated and
3 other impacted entities;

4 “(iii) a plan for gathering data re-
5 garding the metrics described in clause (ii)
6 on an ongoing basis, or at periodic times,
7 including a method by which the agency
8 will invite the public to participate in the
9 review process and seek input from other
10 agencies; and

11 “(iv) a specific timeframe, as appro-
12 priate to the rule and not more than 10
13 years after the effective date of the rule,
14 under which the agency shall conduct the
15 assessment of the rule in accordance with
16 paragraph (2)(A).

17 “(2) ASSESSMENT.—

18 “(A) IN GENERAL.—Each agency shall as-
19 sess the data collected under paragraph
20 (1)(B)(iii), using the methodology set forth in
21 paragraph (1)(B)(ii) or any other appropriate
22 methodology developed after the issuance of a
23 final major rule or a final high-impact rule to
24 better determine whether the regulatory objec-
25 tive was achieved, with respect to the rule—

1 “(i) to analyze how the actual benefits
2 and costs of the rule may have varied from
3 those anticipated at the time the rule was
4 issued; and

5 “(ii) to determine whether—

6 “(I) the rule is accomplishing the
7 regulatory objective of the rule;

8 “(II) the rule has been rendered
9 unnecessary, taking into consider-
10 ation—

11 “(aa) changes in the subject
12 area affected by the rule; and

13 “(bb) whether the rule over-
14 laps, duplicates, or conflicts
15 with—

16 “(AA) other rules; or

17 “(BB) to the extent
18 feasible, State and local gov-
19 ernment regulations;

20 “(III) the rule needs to be modi-
21 fied in order to accomplish the regu-
22 latory objective; and

23 “(IV) other alternatives to the
24 rule or modification of the rule could
25 better achieve the regulatory objective

1 while imposing a smaller burden on
2 society or increase cost-effectiveness,
3 taking into consideration any cost al-
4 ready incurred.

5 “(B) DIFFERENT METHODOLOGY.—If an
6 agency uses a methodology other than the
7 methodology under paragraph (1)(B)(ii) to as-
8 sess data under subparagraph (A), the agency
9 shall include as part of the notice required to
10 be published under subparagraph (D) an expla-
11 nation of the changes in circumstances that ne-
12 cessitated the use of that other methodology.

13 “(C) SUBSEQUENT ASSESSMENTS.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), if, after an assessment
16 of a major rule or a high-impact rule
17 under subparagraph (A), an agency deter-
18 mines that the rule will remain in effect
19 with or without modification, the agency
20 shall—

21 “(I) determine a specific time, as
22 appropriate to the rule and not more
23 than 10 years after the date on which
24 the agency completes the assessment,
25 under which the agency shall conduct

1 another assessment of the rule in ac-
2 cordance with subparagraph (A); and

3 “(II) if the assessment conducted
4 under subclause (I) does not result in
5 a repeal of the rule, periodically assess
6 the rule in accordance with subpara-
7 graph (A) to ensure that the rule con-
8 tinues to meet the regulatory objec-
9 tive.

10 “(ii) EXEMPTION.—The Adminis-
11 trator may exempt an agency from con-
12 ducting a subsequent assessment of a rule
13 under clause (i) if the Administrator deter-
14 mines that there is a foreseeable and ap-
15 parent need for the rule beyond the time-
16 frame required under clause (i)(I).

17 “(D) PUBLICATION.—Not later than 180
18 days after the date on which an agency com-
19 pletes an assessment of a major rule or a high-
20 impact rule under subparagraph (A), the agen-
21 cy shall publish a notice of availability of the re-
22 sults of the assessment in the Federal Register,
23 including the specific time for any subsequent
24 assessment of the rule under subparagraph
25 (C)(i), if applicable.

1 “(3) OIRA OVERSIGHT.—The Administrator
2 shall—

3 “(A) issue guidance for agencies regarding
4 the development of the framework under para-
5 graph (1) and the conduct of the assessments
6 under paragraph (2)(A);

7 “(B) oversee the timely compliance of
8 agencies with this subsection;

9 “(C) ensure that the results of each assess-
10 ment conducted under paragraph (2)(A) are—

11 “(i) published promptly on a central-
12 ized Federal website; and

13 “(ii) noticed in the Federal Register
14 in accordance with paragraph (2)(D);

15 “(D) ensure that agencies streamline and
16 coordinate the assessment of major rules or
17 high-impact rules with similar or related regu-
18 latory objectives;

19 “(E) exempt an agency from including the
20 framework required under paragraph (1)(B)
21 when publishing a final major rule or a final
22 high-impact rule if the Administrator deter-
23 mines that compliance with paragraph (1)(B) is
24 unnecessary, impracticable, or contrary to the

1 public interest, as described in subsection
 2 (g)(3)(A)(i); and

3 “(F) extend the deadline specified by an
 4 agency for an assessment of a major rule or a
 5 high-impact rule under paragraph (1)(B)(iv) or
 6 paragraph (2)(C)(i)(I) for a period of not more
 7 than 90 days if the agency justifies why the
 8 agency is unable to complete the assessment by
 9 that deadline.

10 “(4) RULE OF CONSTRUCTION.—Nothing in
 11 this subsection shall be construed to affect—

12 “(A) the authority of an agency to assess
 13 or modify a major rule or a high-impact rule of
 14 the agency earlier than the end of the time-
 15 frame specified for the rule under paragraph
 16 (1)(B)(iv); or

17 “(B) any other provision of law that re-
 18 quires an agency to conduct retrospective re-
 19 views of rules issued by the agency.

20 “(5) APPLICABILITY.—

21 “(A) IN GENERAL.—This subsection shall
 22 not apply to—

23 “(i) a major rule or a high-impact
 24 rule of an agency—

1 “(I) that the Administrator re-
 2 viewed before the date of enactment of
 3 this subsection;

4 “(II) for which the agency is re-
 5 quired to conduct a retrospective re-
 6 view under any other provision of law
 7 that meets or exceeds the require-
 8 ments of this subsection, as deter-
 9 mined by the Administrator; or

10 “(III) for which the authorizing
 11 statute is subject to periodic reauthor-
 12 ization by Congress not less fre-
 13 quently than once every 10 years;

14 “(ii) guidance;

15 “(iii) routine and administrative rules;

16 or

17 “(iv) a rule that is reviewed under
 18 section 2222 of the Economic Growth and
 19 Regulatory Paperwork Reduction Act of
 20 1996 (12 U.S.C. 3311).

21 “(B) DIRECT AND INTERIM FINAL MAJOR
 22 RULE OR HIGH-IMPACT RULE.—In the case of a
 23 major rule or a high-impact rule of an agency
 24 for which the agency is not required to issue a
 25 notice of proposed rulemaking in response to an

1 emergency or a statutorily imposed deadline,
2 the agency shall publish the framework required
3 under paragraph (1)(B) in the Federal Register
4 not later than 180 days after the date on which
5 the agency publishes the rule.

6 “(6) RECOMMENDATIONS TO CONGRESS.—If,
7 under an assessment conducted under paragraph
8 (2), an agency determines that a major rule or a
9 high-impact rule should be modified or repealed, the
10 agency may submit to Congress recommendations
11 for legislation to amend applicable provisions of law
12 if the agency is prohibited from modifying or repeal-
13 ing the rule under another provision of law.

14 “(7) JUDICIAL REVIEW.—

15 “(A) IN GENERAL.—Judicial review of
16 agency compliance with this subsection is lim-
17 ited to whether an agency—

18 “(i) published the framework for as-
19 sessment of a major rule or a high-impact
20 rule in accordance with paragraph (1); or

21 “(ii) completed and published the re-
22 quired assessment of a major rule or a
23 high-impact rule in accordance with sub-
24 paragraphs (A) and (D) of paragraph (2).

1 “(B) REMEDY AVAILABLE.—In granting
 2 relief in an action brought under subparagraph
 3 (A), a court may only issue an order remanding
 4 the major rule or the high-impact rule, as appli-
 5 cable, to the agency to comply with paragraph
 6 (1) or subparagraph (A) or (D) of paragraph
 7 (2), as applicable.

8 “(C) EFFECTIVE DATE OF MAJOR OR
 9 HIGH-IMPACT RULE.—If, in an action brought
 10 under subparagraph (A)(i), a court determines
 11 that the agency did not comply, the major rule
 12 or the high-impact rule, as applicable, shall take
 13 effect notwithstanding any order issued by the
 14 court.

15 “(m) RULE OF CONSTRUCTION.—Nothing in this sec-
 16 tion shall be construed to limit the scope of the authority
 17 of the Office of Information and Regulatory Affairs under
 18 subchapter I of chapter 35 of title 44, section 515 of the
 19 Treasury and General Government Appropriations Act,
 20 2001 (Public Law 106–554; 114 Stat. 2763A–154), chap-
 21 ter 8 of this title, or any other law or Executive Order.”.

22 **SEC. 4. SCOPE OF REVIEW.**

23 Section 706 of title 5, United States Code, is amend-
 24 ed—

1 (1) in the first sentence of the matter preceding
 2 paragraph (1), by striking “To the extent nec-
 3 essary” and inserting the following:

4 “(a) IN GENERAL.—To the extent necessary”; and
 5 (2) in subsection (a), as so designated—

6 (A) in paragraph (1), by striking “and” at
 7 the end;

8 (B) in paragraph (2)—

9 (i) in the matter preceding subpara-
 10 graph (A), by inserting “, or, when appro-
 11 priate, remand a matter to an agency with-
 12 out setting aside,” after “set aside”; and

13 (ii) in subparagraph (F), by striking
 14 the period at the end and inserting “;
 15 and”; and

16 (C) by striking the flush text following
 17 paragraph (2)(F) and inserting the following:

18 “(3) with respect to the review of a high-impact
 19 rule, as defined in section 551(16), determine wheth-
 20 er the factual findings of the agency issuing the rule
 21 are supported by substantial evidence.

22 “(b) REVIEW OF ENTIRE RECORD; PREJUDICIAL
 23 ERROR.—In making a determination under subsection (a),
 24 the court shall review the whole record or those parts of

1 the record cited by a party, and due account shall be taken
 2 of the rule of prejudicial error.

3 “(c) PRECLUSION OF REVIEW.—

4 “(1) IN GENERAL.—Any action or inaction of
 5 the Administrator under subchapter II of chapter 5,
 6 except sections 552 and 552a, shall not be subject
 7 to judicial review.

8 “(2) RULE OF CONSTRUCTION.—The preclusion
 9 of judicial review under this subsection shall not be
 10 construed or used to construe any other provision of
 11 law to provide any cause of action against the Ad-
 12 ministrator, except as explicitly provided by law.

13 “(d) REVIEW OF CERTAIN GUIDANCE.—Agency guid-
 14 ance that does not interpret a statute or rule may be re-
 15 viewed only under subsection (a)(2)(D).

16 “(e) AGENCY INTERPRETATION OF RULES.—The
 17 weight that a reviewing court gives an interpretation by
 18 an agency of a rule of that agency shall depend on the
 19 thoroughness evident in the consideration of the rule by
 20 the agency, the validity of the reasoning of the agency,
 21 and the consistency of the interpretation with earlier and
 22 later pronouncements.”.

23 **SEC. 5. ADDED DEFINITIONS.**

24 Section 701(b) of title 5, United States Code, is
 25 amended—

1 (1) in paragraph (1)(H), by striking “and” at
2 the end;

3 (2) in paragraph (2)—

4 (A) by inserting “‘guidance,’” after “‘re-
5 lief,’”; and

6 (B) by striking the period at the end and
7 inserting “; and”; and

8 (3) by adding at the end the following:

9 “(3) ‘substantial evidence’ means such relevant
10 evidence as a reasonable mind might accept as ade-
11 quate to support a conclusion in light of the record
12 considered as a whole.”.

13 **SEC. 6. APPLICATION.**

14 The amendments made by this Act to sections 553,
15 701(b), and 706 of title 5, United States Code, shall not
16 apply to any rulemaking, as defined in section 551 of title
17 5, United States Code, as amended by section 2 of this
18 Act, that is pending or completed as of the date of enact-
19 ment of this Act.

20 **SEC. 7. RULE OF CONSTRUCTION WITH RESPECT TO COPY- 21 RIGHTS.**

22 Nothing in this Act, or in the amendments made by
23 this Act, may be construed as altering, modifying, or
24 abridging an exclusive right granted under title 17, United
25 States Code.

1 **SEC. 8. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) ALASKA NATIONAL INTEREST LANDS CONSERVA-
3 TION ACT.—Section 1002(g)(2) of the Alaska National In-
4 terest Lands Conservation Act (16 U.S.C. 3142(g)(2)) is
5 amended, in the third sentence, by striking “section
6 706(2)(E)” and inserting “section 706(a)(2)(E)”.

7 (b) ANTARCTIC MARINE LIVING RESOURCES CON-
8 VENTION ACT OF 1984.—Section 308(c) of the Antarctic
9 Marine Living Resources Convention Act of 1984 (16
10 U.S.C. 2437(c)) is amended, in the third sentence, by
11 striking “section 706(2)(E)” and inserting “section
12 706(a)(2)(E)”.

13 (c) CONGRESSIONAL ACCOUNTABILITY ACT OF
14 1995.—Section 409 of the Congressional Accountability
15 Act of 1995 (2 U.S.C. 1409) is amended, in the first sen-
16 tence—

17 (1) by striking “section 706(2)” and inserting
18 “section 706(a)(2)”; and

19 (2) by striking “section 706(2)(B)” and insert-
20 ing “section 706(a)(2)(B)”.

21 (d) CONSUMER PRODUCT SAFETY ACT.—Section 9(i)
22 of the Consumer Product Safety Act (15 U.S.C. 2058(i))
23 is amended, in the first sentence, by striking “section
24 553(e)” and inserting “section 553(i)”.

25 (e) DEEP SEABED HARD MINERAL RESOURCES
26 ACT.—Section 302(b) of the Deep Seabed Hard Mineral

1 Resources Act (30 U.S.C. 1462(b)) is amended, in the
 2 third sentence, by striking “section 706(2)(E)” and in-
 3 serting “section 706(a)(2)(E)”.

4 (f) DEFENSE PRODUCTION ACT OF 1950.—Section
 5 709(b)(1) of the Defense Production Act of 1950 (50
 6 U.S.C. 4559(b)(1)) is amended by striking “for not less
 7 than 30 days, consistent with the requirements of section
 8 553(b)” and inserting “in a manner consistent with the
 9 requirements of section 553(c)”.

10 (g) ENDANGERED SPECIES ACT OF 1973.—Section
 11 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C.
 12 1533(b)(3)) is amended—

13 (1) in subparagraph (A), in the first sentence,
 14 by striking “section 553(e)” and inserting “section
 15 553(i)”; and

16 (2) in subparagraph (D)(i), in the first sen-
 17 tence, by striking “section 553(e)” and inserting
 18 “section 553(i)”.

19 (h) EXPEDITED FUNDS AVAILABILITY ACT.—Section
 20 609(a) of the Expedited Funds Availability Act (12 U.S.C.
 21 4008(a)) is amended, in the matter preceding paragraph
 22 (1), by striking “section 553(c)” and inserting “section
 23 553”.

24 (i) FASTENER QUALITY ACT.—Section 6(b)(3) of the
 25 Fastener Quality Act (15 U.S.C. 5408(b)(3)) is amended,

1 in the second sentence, by striking “section 706(2)” and
2 inserting “section 706(a)(2)”.

3 (j) FEDERAL FOOD, DRUG, AND COSMETIC ACT.—
4 Section 912(b) of the Federal Food, Drug, and Cosmetic
5 Act (21 U.S.C. 387l(b)) is amended, in the second sen-
6 tence, by striking “section 706(2)(A)” and inserting “sec-
7 tion 706(a)(2)(A)”.

8 (k) FEDERAL HAZARDOUS SUBSTANCES ACT.—Sec-
9 tion 3 of the Federal Hazardous Substances Act (15
10 U.S.C. 1262) is amended—

11 (1) in subsection (e)(1), in the first sentence, by
12 striking “(other than clause (B) of the last sentence
13 of subsection (b) of such section) of title 5 of the
14 United States Code” and inserting “of title 5,
15 United States Code, other than subsection (g)(3) of
16 such section,”; and

17 (2) in subsection (j), in the first sentence, by
18 striking “section 553(e)” and inserting “section
19 553(i)”.

20 (l) FEDERAL TRADE COMMISSION ACT.—Section
21 18(e) of the Federal Trade Commission Act (15 U.S.C.
22 57a(e)) is amended—

23 (1) in paragraph (3), in the second sentence of
24 the matter preceding subparagraph (A), by striking

1 “section 706(2)” and inserting “section 706(a)(2)”;
2 and

3 (2) in paragraph (5)(C), in the second sentence,
4 by striking “Section 706(2)(E)” and inserting “Sec-
5 tion 706(a)(2)(E)”.

6 (m) FLAMMABLE FABRICS ACT.—The Flammable
7 Fabrics Act (15 U.S.C. 1191 et seq.) is amended—

8 (1) in section 4(k) (15 U.S.C. 1193(k)), in the
9 first sentence, by striking “section 553(e)” and in-
10 serting “section 553(i)”; and

11 (2) in section 16(c)(2) (15 U.S.C. 1203(c)(2)),
12 by striking “section 553(b)” and inserting “section
13 553(c)”.

14 (n) GENERAL EDUCATION PROVISIONS ACT.—Sec-
15 tion 411 of the General Education Provisions Act (20
16 U.S.C. 1221e–4) is amended, in the second sentence, by
17 striking “Notwithstanding the exception provided under
18 section 553(b) of title 5, such” and inserting “Such”.

19 (o) HIGH SEAS FISHING COMPLIANCE ACT OF
20 1995.—Section 108(d) of the High Seas Fishing Compli-
21 ance Act of 1995 (16 U.S.C. 5507(d)) is amended, in the
22 third sentence, by striking “section 706(2)” and inserting
23 “section 706(a)(2)”.

1 (p) HOUSING AND COMMUNITY DEVELOPMENT ACT
2 OF 1992.—The Housing and Community Development
3 Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

4 (1) in section 643(b)(3) (42 U.S.C.
5 13603(b)(3)), in the first sentence, by striking
6 “(notwithstanding subsections (a)(2), (b)(B), and
7 (d)(3) of such section)” and inserting “(notwith-
8 standing subsections (a)(2), (g)(3), and (h)(2) of
9 such section)”; and

10 (2) in section 685 (42 U.S.C. 13643), in the
11 second sentence, by striking “(notwithstanding sub-
12 sections (a)(2), (b)(B), and (d)(3) of such section)”
13 and inserting “(notwithstanding subsections (a)(2),
14 (g)(3), and (h)(2) of such section)”.

15 (q) INTERNATIONAL BANKING ACT OF 1978.—Sec-
16 tion 7(f)(2) of the International Banking Act of 1978 (12
17 U.S.C. 3105(f)(2)) is amended by striking “paragraph
18 (2)(F)” and inserting “subsection (a)(2)(F)”.

19 (r) MAGNUSON-STEVENSON FISHERY CONSERVATION
20 AND MANAGEMENT ACT.—Section 308(b) of the Magnu-
21 son-Stevens Fishery Conservation and Management Act
22 (16 U.S.C. 1858(b)) is amended, in the third sentence,
23 by striking “section 706(2)” and inserting “section
24 706(a)(2)”.

1 (s) MARINE MAMMAL PROTECTION ACT OF 1972.—
 2 Section 109 of the Marine Mammal Protection Act of
 3 1972 (16 U.S.C. 1379) is amended—

4 (1) in subsection (c)(4), in the first sentence, by
 5 striking “section 706(2) (A) through (E) of Title”
 6 and inserting “subparagraphs (A) through (E) of
 7 section 706(a)(2) of title”; and

8 (2) in subsection (d)(2), in the second sen-
 9 tence—

10 (A) by striking “Title” and inserting
 11 “title”; and

12 (B) by striking “subsection (d) of such sec-
 13 tion 553” and inserting “subsection (h) of such
 14 section 553”.

15 (t) MCKINNEY-VENTO HOMELESS ASSISTANCE
 16 ACT.—Section 433 of the McKinney-Vento Homeless As-
 17 sistance Act (42 U.S.C. 11387) is amended, in the second
 18 sentence, by striking “(notwithstanding subsections
 19 (a)(2), (b)(B), and (d)(3) of such section)” and inserting
 20 “(notwithstanding subsections (a)(2), (g)(3), and (h)(2) of
 21 such section)”.

22 (u) MIGRANT AND SEASONAL AGRICULTURAL WORK-
 23 ER PROTECTION ACT.—The Migrant and Seasonal Agri-
 24 cultural Worker Protection Act (29 U.S.C. 1801 et seq.)
 25 is amended—

1 (1) in section 103(c) (29 U.S.C. 1813(c)), in
 2 the third sentence, by striking “section 706(2)(E)”
 3 and inserting “section 706(a)(2)(E)”; and

4 (2) in section 503(c) (29 U.S.C. 1853(c)), in
 5 the third sentence, by striking “section 706(2)(E)”
 6 and inserting “section 706(a)(2)(E)”.

7 (v) MILWAUKEE RAILROAD RESTRUCTURING ACT.—
 8 The Milwaukee Railroad Restructuring Act (45 U.S.C.
 9 901 et seq.) is amended—

10 (1) in section 5(b)(2) (45 U.S.C. 904(b)(2)), in
 11 the second sentence, by striking “sections 706(2)(A),
 12 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of
 13 the United States Code” and inserting “subpara-
 14 graphs (A), (B), (C), and (D) of section 706(a)(2)
 15 of title 5, United States Code”; and

16 (2) in section 17(b)(2) (45 U.S.C. 915(b)(2)),
 17 in the second sentence, by striking “sections
 18 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of
 19 title 5 of the United States Code” and inserting
 20 “subparagraphs (A), (B), (C), and (D) of section
 21 706(a)(2) of title 5, United States Code”.

22 (w) NATIVE AMERICAN PROGRAMS ACT OF 1974.—
 23 Section 814 of the Native American Programs Act of 1974
 24 (42 U.S.C. 2992b–1) is amended—

25 (1) in subsection (b)—

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking “Subparagraph (A) of the last sentence of section 553(b) of title 5, United States Code, shall not apply with respect to any interpretative rule or general statement of policy” and inserting “Section 553(c) of title 5, United States Code, shall apply with respect to guidance”;

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking “Subparagraph (B) of the last sentence of section 553(b)” and inserting “Section 553(g)(3)”; and

(ii) by striking “an interpretative rule or a general statement of policy” and inserting “guidance”; and

(C) in paragraph (3), in the matter preceding subparagraph (A)—

(i) by striking “The first 2 sentences of section 553(b)” and inserting “Section 553(c)”; and

(ii) by striking “an interpretative rule, a general statement of policy,” and inserting “guidance”;

(2) in subsection (c)—

1 (A) in the matter preceding paragraph

2 (1)—

3 (i) by striking “section 553(d)” and

4 inserting “section 553(h)”; and

5 (ii) by striking “an interpretative

6 rule) or general statement of policy” and

7 inserting “guidance)”; and

8 (B) in the flush text following paragraph

9 (2), by striking “the first 2 sentences of section

10 553(b)” and inserting “section 553(c)”;

11 (3) in subsection (d), by striking “an interpre-

12 tative rule) and each general statement of policy”

13 and inserting “guidance)”;

14 (4) in subsection (e)—

15 (A) by striking “any interpretative rule) or

16 a general statement of policy” and inserting

17 “guidance)”; and

18 (B) by striking “or such general statement

19 of policy”;

20 (5) in subsection (f)—

21 (A) by striking “an interpretative rule) or

22 a general statement of policy” and inserting

23 “guidance)”; and

24 (B) by striking “or such general statement

25 of policy”; and

1 (6) by adding at the end the following:

2 “(g) In this section, the term ‘guidance’ has the
3 meaning given the term in section 551 of title 5, United
4 States Code.”.

5 (x) NATURAL GAS POLICY ACT OF 1978.—Section
6 502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C.
7 3412(b)) is amended, in the third sentence, by striking
8 “section 553(d)(3)” and inserting “section 553(h)(2)”.

9 (y) NOISE CONTROL ACT OF 1972.—Section 6(c)(2)
10 of the Noise Control Act of 1972 (42 U.S.C. 4905(c)(2))
11 is amended by striking “the first sentence of section
12 553(c)” and inserting “section 553(c)(4)”.

13 (z) NORTHEAST RAIL SERVICE ACT OF 1981.—Sec-
14 tion 1152(c) of the Northeast Rail Service Act of 1981
15 (45 U.S.C. 1105(c)) is amended by striking “paragraphs
16 (2) (A), (B), (C), and (D) of section 706, title 5” and
17 inserting “subparagraphs (A) through (D) of section
18 706(a)(2) of title 5”.

19 (aa) NORTHERN PACIFIC HALIBUT ACT OF 1982.—
20 Section 8(b) of the Northern Pacific Halibut Act of 1982
21 (16 U.S.C. 773f(b)) is amended, in the third sentence, by
22 striking “section 706(2)” and inserting “section
23 706(a)(2)”.

1 (bb) POISON PREVENTION PACKAGING ACT OF
 2 1970.—The Poison Prevention Packaging Act of 1970 (15
 3 U.S.C. 1471 et seq.) is amended—

4 (1) in section 5 (15 U.S.C. 1474)—

5 (A) in subsection (a), in the first sentence,
 6 by striking “(other than paragraph (3)(B) of
 7 the last sentence of subsection (b) of such sec-
 8 tion) of title 5 of the United States Code” and
 9 inserting “of title 5, United States Code, other
 10 than subsection (g)(3) of such section,”; and

11 (B) in subsection (b)—

12 (i) by striking “of the United States
 13 Code” each place that term appears and
 14 inserting “, United States Code”; and

15 (ii) in paragraph (3), in the first sen-
 16 tence, by striking “paragraph (2) of sec-
 17 tion 706” and inserting “section
 18 706(a)(2)”; and

19 (2) in section 7(c)(2) (15 U.S.C. 1476(c)(2)),
 20 by striking “section 553(b)” and inserting “section
 21 553(c)”.

22 (cc) POULTRY PRODUCTS INSPECTION ACT.—Section
 23 14(c) of the Poultry Products Inspection Act (21 U.S.C.
 24 463(c)) is amended by striking “section 553(c) of title 5,

1 United States Code” and inserting “section 553(c)(4) of
2 title 5, United States Code,”.

3 (dd) PUBLIC HEALTH SERVICE ACT.—Section
4 2723(b)(2)(E)(iii) of the Public Health Service Act (42
5 U.S.C. 300gg–22(b)(2)(E)(iii)) is amended by striking
6 “section 706(2)(E)” and inserting “section
7 706(a)(2)(E)”.

8 (ee) REGIONAL RAIL REORGANIZATION ACT OF
9 1973.—Section 216(c)(3) of the Regional Rail Reorga-
10 nization Act of 1973 (45 U.S.C. 726(c)(3)) is amended,
11 in the fourth sentence, by striking “section 706(2)” and
12 inserting “section 706(a)(2)”.

13 (ff) SOCIAL SECURITY ACT.—The Social Security Act
14 (42 U.S.C. 301 et seq.) is amended—

15 (1) in section 221(j) (42 U.S.C. 421(j)), in the
16 flush text following paragraph (3), by striking “in
17 accordance with section 553(b)(A) of title 5, United
18 States Code” and all that follows through “and
19 statements” and inserting “in accordance with sec-
20 tion 553(g)(2) of title 5, United States Code, of
21 guidance or rules of agency organization, procedure,
22 or practice relating to consultative examinations if
23 such guidance and rules”; and

1 (2) in section 1871(b)(2) (42 U.S.C.
2 1395hh(b)(2)), by striking subparagraph (C) and in-
3 serting the following:

4 “(C) subsection (c) of section 553 of title
5 5, United States Code, does not apply pursuant
6 to subsection (g)(3) of such section.”.

7 (gg) SOUTH PACIFIC TUNA ACT OF 1988.—Section
8 8(b) of the South Pacific Tuna Act of 1988 (16 U.S.C.
9 973f(b)) is amended, in the third sentence, by striking
10 “section 706(2)” and inserting “section 706(a)(2)”.

11 (hh) TARIFF ACT OF 1930.—Section 777(f)(5) of the
12 Tariff Act of 1930 (19 U.S.C. 1677f(f)(5)) is amended,
13 in the third sentence, by striking “section 706(2)” and
14 inserting “section 706(a)(2)”.

15 (ii) TITLE 5, UNITED STATES CODE.—Title 5,
16 United States Code, is amended—

17 (1) in section 556(d), in the sixth sentence, by
18 striking “rule making” and inserting “rulemaking”;

19 (2) in section 557(b), in the fourth sentence of
20 the matter preceding paragraph (1), by striking
21 “rule making” and inserting “rulemaking”;

22 (3) in section 562(11), by striking “means ‘rule
23 making’ as that term is defined in section 551(5)”
24 and inserting “has the meaning given the term in
25 section 551”;

1 (4) in section 601(2), by striking “section
2 553(b)” and inserting “section 553(c”;

3 (5) in section 1103(b)(1), by striking “section
4 553(b)(1), (2), and (3)” and inserting “section
5 553(c”;

6 (6) in section 1105, by striking “subsections
7 (b), (c), and (d)” and inserting “subsections (b)
8 through (h) and (j)”.

9 (jj) TITLE 11, UNITED STATES CODE.—Section
10 1172(b) of title 11, United States Code, is amended, in
11 the second sentence, by striking “sections 706(2)(A),
12 706(2)(B), 706(2)(C), and 706(2)(D) of title 5” and in-
13 serting “subparagraphs (A), (B), (C), and (D) of section
14 706(a)(2) of title 5”.

15 (kk) TITLE 14, UNITED STATES CODE.—Section
16 2507(b)(2)(A) of title 14, United States Code, is amended
17 by striking “section 706(1)” and inserting “section
18 706(a)(1)”.

19 (ll) TITLE 28, UNITED STATES CODE.—Section 3902
20 of title 28, United States Code, is amended, in the first
21 sentence, by striking “section 706(2)” and inserting “sec-
22 tion 706(a)(2)”.

23 (mm) TITLE 41, UNITED STATES CODE.—Section
24 8503(a)(2) of title 41, United States Code, is amended

1 by striking “section 553(b) to (e)” and inserting “section
2 553”.

3 (nn) TITLE 46, UNITED STATES CODE.—Title 46,
4 United States Code, is amended—

5 (1) in section 14104(b), in the second sentence,
6 by striking “shall be considered to be an interpretive
7 regulation for purposes of section 553 of title 5” and
8 inserting “shall be subject to section 553 of title 5”;
9 and

10 (2) in section 70105(c)(3)(B), in the second
11 sentence, by striking “section 706(2)(E)” and in-
12 serting “section 706(a)(2)(E)”.

13 (oo) TOXIC SUBSTANCES CONTROL ACT.—Section
14 19(c)(1)(B) of the Toxic Substances Control Act (15
15 U.S.C. 2618(c)(1)(B)) is amended—

16 (1) in clause (i)—

17 (A) in subclause (I), by striking “para-
18 graph (2)(E)” and inserting “subsection
19 (a)(2)(E)”; and

20 (B) in subclause (II), by striking “para-
21 graph (2)(E)” and inserting “subsection
22 (a)(2)(E)”; and

23 (2) in clause (ii), by striking “section 553(c)”
24 and inserting “section 553(f)(2)”.

1 (pp) UNFUNDED MANDATES REFORM ACT OF
2 1995.—Section 401(a)(2)(A) of the Unfunded Mandates
3 Reform Act of 1995 (2 U.S.C. 1571(a)(2)(A)) is amended
4 by striking “section 706(1)” and inserting “section
5 706(a)(1)”.

6 (qq) UNITED STATES WAREHOUSE ACT.—Section
7 13(d)(2) of the United States Warehouse Act (7 U.S.C.
8 252(d)(2)) is amended by striking “section 706(2)” and
9 inserting “section 706(a)(2)”.

○