

## Calendar No. 312

115TH CONGRESS  
2D SESSION

# S. 951

[Report No. 115–208]

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents, and for other purposes.

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### IN THE SENATE OF THE UNITED STATES

APRIL 26, 2017

Mr. PORTMAN (for himself, Ms. HEITKAMP, Mr. HATCH, Mr. MANCHIN, Mr. PAUL, Mr. JOHNSON, Mr. STRANGE, Mr. LANKFORD, Mrs. FISCHER, and Mr. SCOTT) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

FEBRUARY 14, 2018

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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## A BILL

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Regulatory Account-  
3 ability Act of 2017”.

4 **SEC. 2. DEFINITIONS.**

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

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

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

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

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

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

16 “(15) ‘guidance’ means an agency statement of  
17 general applicability, other than a rule, that—

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

20 “(B) sets forth a policy on a statutory,  
21 regulatory, or technical issue or an interpreta-  
22 tion of a statutory or regulatory issue;

23 “(16) ‘high-impact rule’ means any rule that  
24 the Administrator determines is likely to cause an  
25 annual effect on the economy of \$1,000,000,000 or  
26 more; adjusted once every 5 years to reflect in-

1        creases in the Consumer Price Index for All Urban  
 2        Consumers, as published by the Bureau of Labor  
 3        Statistics of the Department of Labor;

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

6            “(A) an annual effect on the economy of  
 7        \$100,000,000 or more, adjusted once every 5  
 8        years to reflect increases in the Consumer Price  
 9        Index for All Urban Consumers, as published  
 10       by the Bureau of Labor Statistics of the De-  
 11       partment of Labor;

12           “(B) a major increase in costs or prices for  
 13       consumers, individual industries, Federal,  
 14       State, local, or tribal government agencies, or  
 15       geographic regions; or

16           “(C) significant adverse effects on competi-  
 17       tion, employment, investment, productivity, in-  
 18       novation, public health and safety, or the ability  
 19       of United States-based enterprises to compete  
 20       with foreign-based enterprises in domestic and  
 21       export markets;

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

24           “(A) an annual effect on the economy of  
 25        \$100,000,000 or more, adjusted once every 5

years to reflect increases in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the Department of Labor;

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

“(C) significant adverse effects on competition, employment, investment, productivity, innovation, public health and safety, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets;

“(19) ‘Office of Information and Regulatory Affairs’ means the office established under section 3503 of title 44 and any successor to that office; and

“(20) ‘Administrator’ means the Administrator of the Office of Information and Regulatory Affairs.”.

### **SEC. 3. RULEMAKING.**

Section 553 of title 5, United States Code, is amended—

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

3           (2) in subsection (a), by striking “(a) This sec-  
4           tion applies” and inserting “(a) APPLICABILITY—  
5           This section applies”; and

6           (3) by striking subsections (b) through (e) and  
7           inserting the following:

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

11           “(1) The legal authority under which a rule  
12          may be proposed, including whether rulemaking is  
13          required by statute or is within the discretion of the  
14          agency.

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

17           “(3) Whether existing Federal laws or rules  
18          have created or contributed to the problem the agen-  
19          cy may address with a rule and, if so, whether those  
20          Federal laws or rules could be amended or rescinded  
21          to address the problem in whole or in part.

22           “(4) A reasonable number of alternatives for a  
23          new rule that meet the statutory objective, including  
24          substantial alternatives or other responses identified

1 by interested persons, with the consideration of 3 al-  
 2 ternatives presumed to be reasonable.

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

8 ~~“(A) the direct costs and benefits;~~

9 ~~“(B) the nature and degree of risks ad-~~  
 10 ~~ressed by the rule and the countervailing risks~~  
 11 ~~that might be posed by agency action; and~~

12 ~~“(C) to the extent practicable, the cumu-~~  
 13 ~~lative and indirect costs and benefits.~~

14 ~~“(e) NOTICE OF PROPOSED RULEMAKING.—~~

15 ~~“(1) IN GENERAL.—If an agency determines~~  
 16 ~~that the objectives of the agency require the agency~~  
 17 ~~to issue a rule, the agency shall notify the Adminis-~~  
 18 ~~trator and publish a notice of proposed rulemaking~~  
 19 ~~in the Federal Register, which shall include—~~

20 ~~“(A) a statement of the time, place, and~~  
 21 ~~nature of any public rulemaking proceedings;~~

22 ~~“(B) reference to the legal authority under~~  
 23 ~~which the rule is proposed;~~

24 ~~“(C) the text of the proposed rule;~~

1           “(D) a summary of information known to  
 2           the agency concerning the considerations de-  
 3           scribed in subsection (b); and

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

7           “(i) a reasoned preliminary expla-  
 8           nation regarding how—

9           “(I) the proposed rule meets the  
 10          statutory objectives; and

11          “(II) the benefits of the proposed  
 12          rule justify the costs; and

13          “(ii) a discussion of—

14          “(I) the costs and benefits of al-  
 15          ternatives considered by the agency  
 16          under subsection (b)(4);

17          “(II) whether the alternatives  
 18          considered by the agency under sub-  
 19          section (b)(4) meet relevant statutory  
 20          objectives; and

21          “(III) the reasons why the agen-  
 22          cy did not propose an alternative con-  
 23          sidered by the agency under sub-  
 24          section (b)(4).

25          “(2) ACCESSIBILITY.—

1           “(A) IN GENERAL.—Except as provided in  
 2           subparagraph (B), not later than the date on  
 3           which an agency publishes a notice of proposed  
 4           rulemaking under paragraph (1), all studies,  
 5           models, scientific literature, and other informa-  
 6           tion developed or relied upon by the agency,  
 7           and actions taken by the agency to obtain that  
 8           information, in connection with the determina-  
 9           tion of the agency to propose the rule that is  
 10          the subject of the rulemaking shall be placed in  
 11          the docket for the proposed rule and made ac-  
 12          cessible to the public.

13          “(B) EXCEPTION.—Subparagraph (A)  
 14          shall not apply with respect to information that  
 15          is exempt from disclosure under section 552(b).

16          “(3) INFORMATION QUALITY.—If an agency  
 17          proposes a rule that rests upon scientific, technical,  
 18          or economic information, the agency shall propose  
 19          the rule on the basis of the best reasonably available  
 20          scientific, technical, or economic information.

21          “(4) PUBLIC COMMENT.—

22                 “(A) IN GENERAL.—After publishing a no-  
 23                 tice of proposed rulemaking under paragraph  
 24                 (1), an agency shall provide interested persons  
 25                 an opportunity to participate in the rulemaking



1 through the submission of written material,  
2 data, views, or arguments with or without op-  
3 portunity for oral presentation, except that—

4 “(i) if a public hearing is convened  
5 under subsection (e), reasonable oppor-  
6 tunity for oral presentation shall be pro-  
7 vided at the public hearing as provided in  
8 subsection (e); and

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

13 “(I) sections 556 and 557 shall  
14 apply; and

15 “(II) the petition procedures of  
16 subsection (e) shall not apply.

17 “(B) **TIMELINE.**—An agency shall provide  
18 not less than 60 days; or, with respect to a pro-  
19 posed major rule or a proposed high-impact  
20 rule, not less than 90 days, for interested per-  
21 sons to submit written material, data, views, or  
22 arguments under subparagraph (A).

23 “(5) **CHANGE OF CLASSIFICATION AFTER PUB-**  
24 **LICATION OF NOTICE.**—If, after an agency submits  
25 the notification and publishes the notice of proposed

1 rulemaking required under paragraph (1), a pro-  
 2 posed rule is determined to be a major rule or a  
 3 high-impact rule, the agency shall—

4 “(A) publish a notice in the Federal Reg-  
 5 ister with respect to the change of the classi-  
 6 fication of the rule; and

7 “(B) allow interested persons an additional  
 8 opportunity of not less than 30 days to com-  
 9 ment on—

10 “(i) the rule; and

11 “(ii) the change of the classification of  
 12 the rule.

13 “(6) PROHIBITION ON CERTAIN COMMUNICA-  
 14 TIONS.—

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

1 means, to the public with respect to the pro-  
2 posed rule in a manner that—

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

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

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

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

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

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

1           “(A) establish an electronic docket for that  
2 rulemaking, which may have a physical counter-  
3 part; and

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

6               “(i) briefly describe the subject and  
7 objectives of, and the problem to be solved  
8 by, the rule;

9               “(ii) reference the legal authority  
10 under which the rule would be proposed;

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

16               “(iv) indicate how interested persons  
17 may submit written material for the dock-  
18 et.

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

23           “(3) APPLICABILITY.—With respect to the al-  
24 ternatives and other ideas proposed under paragraph  
25 (1)(B)(iii)—

1           “(A) the alternatives and other ideas are  
2           for the benefit of—

3                   “(i) the agency receiving the alter-  
4                   natives and other ideas; and

5                   “(ii) the public; and

6           “(B) the agency receiving the alternatives  
7           and other ideas may respond to the alternatives  
8           and other ideas.

9           “(4) TIMETABLE.—

10                   “(A) IN GENERAL.—With respect to a  
11                   rulemaking for a major rule or a high-impact  
12                   rule, the agency proposing the rule shall estab-  
13                   lish a timetable for the rulemaking that—

14                           “(i) includes intermediate and final  
15                           completion dates for actions of the agency;  
16                           and

17                           “(ii) shall be published in the elec-  
18                           tronic docket established under paragraph  
19                           (1)(A) with respect to the rulemaking.

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

24                   “(i) the size and complexity of the  
25                   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           “(C) 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           ~~“(5) NOTICE OF DETERMINATION OF OTHER~~  
4           ~~AGENCY COURSE.—~~

5           ~~“(A) IN GENERAL.—If, after publishing~~  
6           ~~the notice required under paragraph (1), an~~  
7           ~~agency determines not to issue a major rule or~~  
8           ~~a high-impact rule, the agency shall, after con-~~  
9           ~~sulting with the Administrator—~~

10           ~~“(i) publish a notice of determination~~  
11           ~~of other agency course; and~~

12           ~~“(ii) if the agency intends to issue a~~  
13           ~~rule, comply with the procedures required~~  
14           ~~under subsection (e).~~

15           ~~“(B) CONTENTS.—A notice of determina-~~  
16           ~~tion of other agency course published under~~  
17           ~~subparagraph (A)(i) shall include—~~

18           ~~“(i) a description of the alternative re-~~  
19           ~~sponse the agency has determined to~~  
20           ~~adopt; and~~

21           ~~“(ii) if the agency intends to issue a~~  
22           ~~rule, any information required under sub-~~  
23           ~~section (e).~~

24           ~~“(e) PUBLIC HEARING FOR HIGH-IMPACT RULES~~  
25           ~~AND CERTAIN MAJOR RULES.—~~

1           ~~“(1) PETITION FOR PUBLIC HEARING.—~~

2                     ~~“(A) IN GENERAL.—~~Before the date on  
 3           which the comment period closes with respect to  
 4           a proposed high-impact rule or a proposed  
 5           major rule described in section 551(18)(A), an  
 6           interested person may petition the agency that  
 7           proposed the rule to hold a public hearing in ac-  
 8           cordance with this subsection.

9                     ~~“(B) PETITION FOR PUBLIC HEARING FOR~~  
 10           ~~HIGH-IMPACT RULES.—~~

11                    ~~“(i) GRANTING OF PETITION.—~~Not  
 12           later than 30 days after the date on which  
 13           an agency receives a petition submitted  
 14           under subparagraph (A) with respect to a  
 15           high-impact rule, the agency shall grant  
 16           the petition if the petition shows that—

17                    ~~“(I) the proposed rule is based~~  
 18                    on conclusions with respect to 1 or  
 19                    more specific scientific, technical, eco-  
 20                    nomic, or other complex factual issues  
 21                    that are genuinely disputed;

22                    ~~“(II) with respect to a rule that~~  
 23                    the agency is required to reissue not  
 24                    less frequently than once every 3  
 25                    years, the interested person submit-



ting the petition could not have raised  
the disputed factual issues described  
in subelause (I) during the 5-year pe-  
riod preceding the date on which the  
petition is submitted; and

“(III) the resolution of the dis-  
puted factual issues described in sub-  
elause (I) would likely have an effect  
on—

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

“(bb) whether the proposed  
rule achieves the statutory pur-  
pose.

“(ii) DENIAL OF PETITION.—If an  
agency denies a petition submitted under  
elause (i) in whole or in part, the agency  
shall include in the rulemaking record an  
explanation for the denial sufficient for ju-  
dicial review, including—

“(I) findings by the agency  
that—

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

1           “(bb) with respect to a rule  
 2           that the agency is required to re-  
 3           issue not less frequently than  
 4           once every 3 years; the interested  
 5           person submitting the petition  
 6           could have raised the disputed  
 7           factual issues in the petition dur-  
 8           ing the 5-year period preceding  
 9           the date on which the petition is  
 10          submitted; and

11          “(II) a reasoned determination  
 12          by the agency that the factual issues  
 13          raised by the petition, even if subject  
 14          to genuine dispute and not subject to  
 15          subelause (I)(bb), will not have an ef-  
 16          fect on—

17               “(aa) the costs and benefits  
 18               of the proposed rule; or

19               “(bb) whether the proposed  
 20               rule achieves the statutory pur-  
 21               pose.

22          “(iii) INCLUSION IN THE RECORD.—A  
 23          petition submitted under subparagraph (A)  
 24          with respect to a high-impact rule and the  
 25          decision of an agency with respect to the

petition shall be included in the rulemaking  
record.

~~“(C) PETITION FOR PUBLIC HEARING FOR  
CERTAIN MAJOR RULES.—~~

~~“(i) IN GENERAL.—In the case of a  
major rule described in section 551(18)(A),  
any interested person may petition for a  
hearing under this subsection on the  
grounds and within the time limitation de-  
scribed in subparagraph (B)(i).~~

~~“(ii) AGENCY AUTHORITY TO DENY  
PETITION.—An agency may deny a petition  
submitted to the agency under clause (i) if  
the agency reasonably determines that—~~

~~“(I) a hearing—~~

~~“(aa) would not advance the  
consideration of the proposed  
rule by the agency; or~~

~~“(bb) would, in light of the  
need for agency action, unreason-  
ably delay completion of the rule-  
making; or~~

~~“(II) with respect to a rule that  
the agency is required to reissue not  
less frequently than once every 3~~

1 years, the interested person submit-  
 2 ting the petition could have raised the  
 3 disputed factual issues in the petition  
 4 during the 5-year period preceding the  
 5 date on which the petition is sub-  
 6 mitted.

7 “(iii) INCLUSION IN THE RECORD.—A  
 8 petition submitted under clause (i) and the  
 9 decision of an agency with respect to the  
 10 petition shall be included in the rulemaking  
 11 record.

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

16 “(A) the proposed rule to be considered at  
 17 the hearing; and

18 “(B) the factual issues to be considered at  
 19 the hearing.

20 “(3) HEARING REQUIREMENTS.—

21 “(A) LIMITED NATURE OF HEARING.—A  
 22 hearing held under this subsection shall be lim-  
 23 ited to—

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

4           “(ii) any other factual issues the reso-  
5           lution of which an agency, in the discretion  
6           of the agency, determines will advance con-  
7           sideration by the agency of the proposed  
8           rule.

9           “(B) PROCEDURES.—

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

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

20           “(iii) ADOPTION OF RULES GOV-  
21           ERNING HEARINGS.—To govern a hearing  
22           held under this subsection, each agency  
23           shall adopt rules that provide for—

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

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

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

20          “(IV) when appropriate, and to  
21          the extent practicable, the consolida-  
22          tion of proceedings with respect to  
23          multiple petitions submitted under  
24          this subsection into a single hearing.

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

7           “(4) JUDICIAL REVIEW.—

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

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

18          “(f) FINAL RULES.—

19          “(1) EFFECTIVENESS OF MAJOR OR HIGH-IM-  
20          PACT RULE.—

21          “(A) IN GENERAL.—Except as provided in  
22          subparagraph (B), in a rulemaking for a major  
23          rule or a high-impact rule, an agency shall  
24          adopt the most cost-effective rule that—

1           “(i) is considered under subsection  
2           (b)(4); and

3           “(ii) meets relevant statutory objec-  
4           tives.

5           “(B) EXCEPTION.—In a rulemaking for a  
6           major rule or a high-impact rule, an agency  
7           may adopt a rule that is more costly than the  
8           most cost-effective alternative that would  
9           achieve the relevant statutory objectives only  
10          if—

11           “(i) the additional benefits of the  
12           more costly rule justify the additional costs  
13           of that rule;

14           “(ii) the agency specifically identifies  
15           each additional benefit described in clause  
16           (i) and the cost of each such additional  
17           benefit; and

18           “(iii) the agency explains why the  
19           agency adopted a rule that is more costly  
20           than the most cost-effective alternative.

21           “(2) PUBLICATION OF NOTICE OF FINAL RULE-  
22           MAKING.—When an agency adopts a final rule, the  
23           agency shall publish a notice of final rulemaking in  
24           the Federal Register, which shall include—



1           “(A) a concise, general statement of the  
2           basis and purpose of the rule;

3           “(B) a reasoned determination by the  
4           agency regarding the considerations described  
5           in subsection (b);

6           “(C) a response to each significant issue  
7           raised in the comments on the proposed rule;  
8           and

9           “(D) with respect to a major rule or a  
10          high-impact rule, a reasoned determination by  
11          the agency that—

12               “(i) the benefits of the rule advance  
13               the relevant statutory objectives and justify  
14               the costs of the rule; and

15               “(ii)(I) no alternative considered  
16               would achieve the relevant statutory objec-  
17               tives in a more cost-effective manner than  
18               the rule; or

19               “(H) the adoption by the agency of a  
20               more costly rule complies with paragraph  
21               (1)(B).

22          “(3) INFORMATION QUALITY.—If an agency  
23          rulemaking rests upon scientific, technical, or eco-  
24          nomic information, the agency shall adopt a final

1 rule on the basis of the best reasonably available sci-  
 2 entific, technical, or economic information.

3 ~~“(4) ACCESSIBILITY.—~~

4 ~~“(A) IN GENERAL.—~~Except as provided in  
 5 subparagraph (B), not later than the date on  
 6 which an agency publishes a notice of final rule-  
 7 making under paragraph (2), all studies, mod-  
 8 els, scientific literature, and other information  
 9 developed or relied upon by the agency, and ac-  
 10 tions taken by the agency to obtain that infor-  
 11 mation, in connection with the determination of  
 12 the agency to finalize the rule that is the sub-  
 13 ject of the rulemaking shall be placed in the  
 14 docket for the rule and made accessible to the  
 15 public.

16 ~~“(B) EXCEPTION.—~~Subparagraph (A)  
 17 shall not apply with respect to information that  
 18 is exempt from disclosure under section 552(b).

19 ~~“(5) RULES ADOPTED AT THE END OF A PRESI-  
 20 DENTIAL ADMINISTRATION.—~~

21 ~~“(A) IN GENERAL.—~~During the 60-day pe-  
 22 riod beginning on a transitional inauguration  
 23 day (as defined in section 3349a), with respect  
 24 to any final rule that had been placed on file  
 25 for public inspection by the Office of the Fed-

1           eral Register or published in the Federal Reg-  
 2           ister as of the date of the inauguration, but  
 3           which had not become effective by the date of  
 4           the inauguration, the agency issuing the rule  
 5           may, by order, delay the effective date of the  
 6           rule for not more than 90 days for the purpose  
 7           of obtaining public comment on whether—

8                   “(i) the rule should be amended or re-  
 9                   scinded; or

10                   “(ii) the effective date of the rule  
 11                   should be further delayed.

12                   “(B) OPPORTUNITY FOR COMMENT.—If an  
 13                   agency delays the effective date of a rule under  
 14                   subparagraph (A), the agency shall give the  
 15                   public not less than 30 days to submit com-  
 16                   ments.

17           “(g) APPLICABILITY.—

18                   “(1) PRIMACY OF CERTAIN RULEMAKING CON-  
 19                   SIDERATIONS AND PROCEDURES IN OTHER FEDERAL  
 20                   LAWS.—

21                   “(A) CONSIDERATIONS.—If a rulemaking  
 22                   is authorized under a Federal law that requires  
 23                   an agency to consider, or prohibits an agency  
 24                   from considering, a factor in a manner that is  
 25                   inconsistent with, or that conflicts with, the re-

quirements under this section, for the purposes of this section, the requirement or prohibition, as applicable, in that other Federal law shall apply to the agency in the rulemaking.

“(B) PROCEDURAL REQUIREMENTS.—If a rulemaking is authorized under a Federal law that requires an agency to follow or use, or prohibits an agency from following or using, a procedure in a manner that is duplicative of, or that conflicts with, a procedural requirement under this section, for the purposes of this section, 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,

1 that subsection shall not apply and the  
2 agency may issue the final rule or an in-  
3 terim final rule, as applicable, under sub-  
4 paragraph (B) or (C).

5 “(ii) INCORPORATION OF GOOD CAUSE  
6 FINDING.—If an agency makes a finding  
7 under clause (i), the agency shall include  
8 that finding and a brief statement with re-  
9 spect to the reasons for that finding in the  
10 final rule or interim final rule, as applica-  
11 ble, issued by the agency.

12 “(B) DIRECT FINAL RULES.—

13 “(i) IN GENERAL.—Except as pro-  
14 vided in clause (ii), if an agency makes a  
15 finding under subparagraph (A)(i) that  
16 compliance with subsection (c), (d), (e), or  
17 (f)(2)(B) before issuing a final rule is un-  
18 necessary, the agency shall, before issuing  
19 the final rule—

20 “(I) publish in the Federal Reg-  
21 ister the text of the final rule, the  
22 brief statement required under sub-  
23 paragraph (A)(ii), and a notice of op-  
24 portunity for public comment;

1           “(H) establish a comment period  
 2           of not less than 30 days for any inter-  
 3           ested person to submit written mate-  
 4           rial, data, views, or arguments with  
 5           respect to the final rule; and

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

8           “(ii) EXCEPTION.—An agency that  
 9           made a finding described in clause (i) may  
 10          choose not to follow the requirements  
 11          under that clause if the agency determines  
 12          that following the requirements would not  
 13          expedite the issuance of the final rule.

14          “(iii) ADVERSE COMMENTS.—If an  
 15          agency receives significant adverse com-  
 16          ments with respect to a rule during the  
 17          comment period established under clause  
 18          (i)(H), the agency shall—

19               “(I) withdraw the notice of final  
 20               rulemaking published by the agency  
 21               with respect to the rule; and

22               “(II) complete rulemaking in ac-  
 23               cordance with subsections (c), (d), (e),  
 24               and (f), as applicable.

25          “(C) INTERIM FINAL RULES.—

1           “(i) IN GENERAL.—If an agency for  
 2           good cause finds that compliance with sub-  
 3           section (e), (d), (e), or (f)(2)(B) before  
 4           issuing a final rule is impracticable or con-  
 5           trary to the public interest, the agency  
 6           shall issue an interim final rule by—

7                   “(I) publishing the interim final  
 8                   rule and a request for public comment  
 9                   in the portion of the Federal Register  
 10                  relating to final rules; and

11                  “(II) providing a cross-reference  
 12                  in the portion of the Federal Register  
 13                  relating to proposed rules that re-  
 14                  quests public comment with respect to  
 15                  the rule not later than 60 days after  
 16                  the rule is published under subclause  
 17                  (I).

18           “(ii) INTERIM PERIOD.—

19                   “(I) IN GENERAL.—Not later  
 20                   than 180 days after the date on which  
 21                   an agency issues an interim final rule  
 22                   under clause (i), the agency shall—

23                           “(aa) rescind the interim  
 24                           rule;

1                   “(bb) initiate rulemaking in  
2                   accordance with subsections (e)  
3                   through (f); or

4                   “(cc) take final action to  
5                   adopt a final rule.

6                   “(H) NO FORCE OR EFFECT.—If,  
7                   as of the end of the 180-day period  
8                   described in subelause (I), an agency  
9                   fails to take an action described in  
10                  item (aa), (bb), or (cc) of that sub-  
11                  clause, the interim final rule issued by  
12                  the agency shall have no force or ef-  
13                  fect.

14                  “(4) EXEMPTION FOR MONETARY POLICY.—

15                  This section shall not apply to a rulemaking or to  
16                  guidance that concerns monetary policy proposed or  
17                  implemented by the Board of Governors of the Fed-  
18                  eral Reserve System or the Federal Open Market  
19                  Committee.

20                  “(h) DATE OF PUBLICATION.—A final rule, a direct  
21                  final rule described in subsection (g)(3)(B), or an interim  
22                  final rule described in subsection (g)(3)(C) shall be pub-  
23                  lished not later than 30 days (or, in the case of a major  
24                  rule or a high-impact rule, not later than 60 days) before  
25                  the effective date of the rule, except—



1           ~~“(1) for guidance; or~~

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

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

5           ~~Each agency shall—~~

6           ~~“(1) give interested persons the right to petition~~  
 7           ~~for the issuance, amendment, or repeal of a rule;~~  
 8           ~~and~~

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

13           ~~“(j) RULEMAKING GUIDELINES.—~~

14           ~~“(1) ASSESSMENT OF RULES.—~~

15           ~~“(A) IN GENERAL.—The Administrator~~  
 16           ~~shall establish guidelines for the assessment, in-~~  
 17           ~~cluding the quantitative and qualitative assess-~~  
 18           ~~ment, of—~~

19                   ~~“(i) the costs and benefits of proposed~~  
 20                   ~~and final rules;~~

21                   ~~“(ii) the cost-effectiveness of proposed~~  
 22                   ~~and final rules;~~

23                   ~~“(iii) other economic issues that are~~  
 24                   ~~relevant to rulemaking under this section~~  
 25                   ~~or other sections of this part; and~~

1           “(iv) risk assessments that are rel-  
 2           evant to rulemaking under this section and  
 3           other sections of this part.

4           “(B) AGENCY ANALYSIS OF RULES.—

5           “(i) IN GENERAL.—The rigor of the  
 6           cost-benefit analysis required by the guide-  
 7           lines established under subparagraph (A)  
 8           shall be commensurate, as determined by  
 9           the Administrator, with the economic im-  
 10          pact of a rule.

11          “(ii) RISK ASSESSMENT GUIDE-  
 12          LINES.—Guidelines for a risk assessment  
 13          described in subparagraph (A)(iv) shall in-  
 14          clude criteria for—

15               “(I) selecting studies and models;

16               “(H) evaluating and weighing  
 17               evidence; and

18               “(III) conducting peer reviews.

19          “(C) UPDATING GUIDELINES.—Not less  
 20          frequently than once every 10 years, the Ad-  
 21          ministrator shall update the guidelines estab-  
 22          lished under subparagraph (A) to enable each  
 23          agency to use the best available techniques to  
 24          quantify and evaluate present and future bene-

fits, costs, other economic issues, and risks as  
objectively and accurately as practicable.

~~“(2) SIMPLIFICATION OF RULES.—~~

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

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

~~“(i) avoid rules that are inconsistent  
or incompatible with, or duplicative of,  
other regulations of the agency and those  
of other agencies; and~~

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

~~“(3) CONSISTENCY IN RULEMAKING.—~~

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

~~“(i) issue guidelines to ensure that  
rulemaking conducted in whole or in part  
under procedures specified in provisions of~~

1 law other than those under this section  
 2 conform with the procedures set forth in  
 3 this section to the fullest extent allowed by  
 4 law; and

5 “(ii) issue guidelines for the conduct  
 6 of hearings under subsection (c); which  
 7 shall provide a reasonable opportunity for  
 8 cross-examination.

9 “(B) AGENCY ADOPTION OF REGULA-  
 10 TIONS.—Each agency shall adopt regulations  
 11 for the conduct of hearings consistent with the  
 12 guidelines issued under this paragraph.

13 “(k) AGENCY GUIDANCE; PROCEDURES TO ISSUE  
 14 MAJOR GUIDANCE; AUTHORITY TO ISSUE GUIDELINES  
 15 FOR ISSUANCE OF GUIDANCE.—

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

17 “(A) not be used by an agency to foreclose  
 18 consideration of issues as to which the guidance  
 19 expresses a conclusion;

20 “(B) state that the guidance is not legally  
 21 binding; and

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

1           ~~“(2) PROCEDURES TO ISSUE MAJOR GUID-~~  
 2           ~~ANCE.—~~Before issuing any major guidance, an agen-  
 3           ~~cy shall—~~

4                   ~~“(A) make and document a reasoned deter-~~  
 5                   ~~mination that—~~

6                           ~~“(i) such guidance is understandable~~  
 7                           ~~and complies with relevant statutory objec-~~  
 8                           ~~tives and regulatory provisions; and~~

9                           ~~“(ii) identifies the costs and benefits,~~  
 10                           ~~including all costs and benefits to be con-~~  
 11                           ~~sidered during a rulemaking under sub-~~  
 12                           ~~section (b), of requiring conduct con-~~  
 13                           ~~forming to such guidance and assures that~~  
 14                           ~~such benefits justify such costs; and~~

15                   ~~“(B) confer with the Administrator on the~~  
 16                   ~~issuance of the major guidance to ensure that~~  
 17                   ~~the guidance—~~

18                           ~~“(i) is reasonable;~~

19                           ~~“(ii) is understandable;~~

20                           ~~“(iii) is consistent with relevant statu-~~  
 21                           ~~tory and regulatory provisions and require-~~  
 22                           ~~ments or practices of other agencies;~~

23                           ~~“(iv) does not produce costs that are~~  
 24                           ~~unjustified by the benefits of the major~~  
 25                           ~~guidance; and~~

1 “(v) is otherwise appropriate.

2 “(3) ISSUANCE OF UPDATED GUIDANCE.—

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

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

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

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

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

21 “(4) MAJOR RULE AND HIGH-IMPACT RULE FRAME-  
22 WORKS.—

23 “(1) IN GENERAL.—Beginning on the date that  
24 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                   “(H) 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 “(H) 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) encourage and assist agencies to~~  
16                   ~~streamline and coordinate the assessment of~~  
17                   ~~major rules or high-impact rules with similar or~~  
18                   ~~related regulatory 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~~

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

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

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

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

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

~~“(5) APPLICABILITY.—~~

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

~~“(i) a major rule or a high-impact  
 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) interpretative rules, general  
 15          statements of policy, or rules of agency or-  
 16          ganization, procedure, or practice;

17          “(iii) routine and administrative rules;  
 18          or

19          “(iv) a rule that is reviewed under  
 20          section 2222 of the Economic Growth and  
 21          Regulatory Paperwork Reduction Act of  
 22          1996 (12 U.S.C. 3311).

23          “(B) DIRECT AND INTERIM FINAL MAJOR  
 24          RULE OR HIGH-IMPACT RULE.—In the case of a  
 25          major rule or a high-impact rule of an agency

1           for which the agency is not required to issue a  
 2           notice of proposed rulemaking in response to an  
 3           emergency or a statutorily imposed deadline;  
 4           the agency shall publish the framework required  
 5           under paragraph (1)(B) in the Federal Register  
 6           not later than 180 days after the date on which  
 7           the agency publishes the rule.

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

16          “(7) JUDICIAL REVIEW.—

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

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

23                         “(ii) completed and published the re-  
 24                         quired assessment of a major rule or a

1 high-impact rule in accordance with sub-  
 2 paragraphs (A) and (D) of paragraph (2).

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

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

16 “(D) ADMINISTRATOR.—Any determina-  
 17 tion, action, or inaction of the Administrator  
 18 under this subsection shall not be subject to ju-  
 19 dicial review.”

#### 20 **SEC. 4. SCOPE OF REVIEW.**

21 Section 706 of title 5, United States Code, is amend-  
 22 ed—

23 (1) in the first sentence of the matter preceding  
 24 paragraph (1), by striking “To the extent nec-



1       essary” and inserting “(a) IN GENERAL.—To the  
2       extent necessary”; and

3       ~~(2)~~ in subsection (a), as so designated—

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

6               (B) in paragraph (2)—

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

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

14               (C) by striking the flush text following  
15      paragraph (2)(F) and inserting the following:

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

20               “~~(b)~~ REVIEW OF ENTIRE RECORD; PREJUDICIAL  
21      ERROR.—In making a determination under subsection (a),  
22      the court shall review the whole record or those parts of  
23      it cited by a party, and due account shall be taken of the  
24      rule of prejudicial error.

1       “(c) PRECLUSION OF REVIEW.—The determination  
 2 of whether a rule is a major rule within the meaning of  
 3 subparagraphs (B) and (C) of section 551(18) shall not  
 4 be subject to judicial review.

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

8       “(e) AGENCY INTERPRETATION OF RULES.—The  
 9 weight that a reviewing court gives an interpretation by  
 10 an agency of a rule of that agency shall depend on the  
 11 thoroughness evident in the consideration of the rule by  
 12 the agency; the validity of the reasoning of the agency;  
 13 and the consistency of the interpretation with earlier and  
 14 later pronouncements.”.

15 **SEC. 5. ADDED DEFINITIONS.**

16       Section 701(b) of title 5, United States Code, is  
 17 amended—

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

20           (2) by redesignating paragraph (2) as para-  
 21 graph (3);

22           (3) by inserting after paragraph (1) the fol-  
 23 lowing:

24           “(2) ‘guidance’ has the meaning given the term  
 25 in section 551;”;

1           (4) in paragraph (3), as so redesignated, by  
 2           striking the period at the end and inserting “; and”;  
 3           and

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

5           “(4) ‘substantial evidence’ means such relevant  
 6           evidence as a reasonable mind might accept as ade-  
 7           quate to support a conclusion in light of the record  
 8           considered as a whole.”.

9   **SEC. 6. APPLICATION.**

10          The amendments made by this Act to sections 553,  
 11   701(b), and 706 of title 5, United States Code, shall not  
 12   apply to any rulemaking, as defined in section 551 of title  
 13   5, United States Code, as amended by section 2 of this  
 14   Act, that is pending or completed as of the date of enact-  
 15   ment of this Act.

16   **SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.**

17          (a) CONSUMER PRODUCT SAFETY ACT.—Section 9(i)  
 18   of the Consumer Product Safety Act (15 U.S.C. 2058(i))  
 19   is amended, in the first sentence, by striking “section  
 20   553(e)” and inserting “section 553(i)”.

21          (b) DEFENSE PRODUCTION ACT OF 1950.—Section  
 22   709(b)(1) of the Defense Production Act of 1950 (50  
 23   U.S.C. 4559(b)(1)) is amended by striking “for not less  
 24   than 30 days, consistent with the requirements of section

1 553(b))” and inserting “in a manner consistent with the  
2 requirements of section 553(e)”.

3 (c) ENDANGERED SPECIES ACT OF 1973.—Section  
4 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C.  
5 1533(b)(3)) is amended—

6 (1) in subparagraph (A), in the first sentence,  
7 by striking “section 553(e)” and inserting “section  
8 553(i)”; and

9 (2) in subparagraph (D)(i), in the first sen-  
10 tence, by striking “section 553(e)” and inserting  
11 “section 553(i)”.

12 (d) EXPEDITED FUNDS AVAILABILITY ACT.—Section  
13 609(a) of the Expedited Funds Availability Act (12 U.S.C.  
14 4008(a)) is amended, in the matter preceding paragraph  
15 (1), by striking “section 553(e)” and inserting “section  
16 553”.

17 (e) FEDERAL HAZARDOUS SUBSTANCES ACT.—Sec-  
18 tion 3 of the Federal Hazardous Substances Act (15  
19 U.S.C. 1262) is amended—

20 (1) in subsection (e)(1), by striking “(other  
21 than clause (B) of the last sentence of subsection (b)  
22 of such section) of title 5 of the United States Code”  
23 and inserting “of title 5, United States Code, other  
24 than subsection (g)(3) of such section,”; and

1           (2) in subsection (j), by striking “section  
2       553(e)” and inserting “section 553(i)”.

3       (f) FLAMMABLE FABRICS ACT.—The Flammable  
4 Fabrics Act (15 U.S.C. 1191 et seq.) is amended—

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

8           (2) in section 16(e)(2) (15 U.S.C. 1203(e)(2)),  
9       by striking “section 553(b)” and inserting “section  
10      553(e)”.

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

16      (h) HOUSING AND COMMUNITY DEVELOPMENT ACT  
17 OF 1992.—The Housing and Community Development  
18 Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

19           (1) in section 643(b)(3) (42 U.S.C.  
20      13603(b)(3)), in the first sentence, by striking  
21      “(notwithstanding subsections (a)(2), (b)(B), and  
22      (d)(3) of such section)” and inserting “(notwith-  
23      standing subsections (a)(2), (g)(3), and (h)(2) of  
24      such section)”; and

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

6           (i) MARINE MAMMAL PROTECTION ACT OF 1972.—  
 7           Section 109(d)(2) of the Marine Mammal Protection Act  
 8           of 1972 (16 U.S.C. 1379(d)(2)) is amended, in the second  
 9           sentence, by striking “subsection (d) of such section 553”  
 10          and inserting “subsection (h) of such section 553”.

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

18          (k) NATIVE AMERICAN PROGRAMS ACT OF 1974.—  
 19          Section 814 of the Native American Programs Act of 1974  
 20          (42 U.S.C. 2992b-1) is amended—

21                 (1) in subsection (b)—

22                         (A) by striking paragraph (1);

23                         (B) by redesignating paragraphs (2) and  
 24                         (3) as paragraphs (1) and (2), respectively;

25                         (C) in paragraph (1), as so redesignated—

1 (i) in the matter preceding subpara-  
 2 graph (A), by striking “Subparagraph (B)  
 3 of the last sentence of section 553(b)” and  
 4 inserting “Section 553(g)(3)”; and

5 (ii) by striking “(other than an inter-  
 6 pretative rule or a general statement of  
 7 policy)”; and

8 (D) in paragraph (2), as so redesignated,  
 9 in the matter preceding subparagraph (A)—

10 (i) by striking “The first 2 sentences  
 11 of section 553(b)” and inserting “Section  
 12 553(c)”; and

13 (ii) by striking “an interpretative rule,  
 14 a general statement of policy, or”; and

15 (2) in subsection (c)—

16 (A) in the matter preceding paragraph (1),  
 17 by striking “section 553(d)” and inserting “sec-  
 18 tion 553(h)”; and

19 (B) in the flush text following paragraph  
 20 (2), by striking “the first 2 sentences of section  
 21 553(b)” and inserting “section 553(c)”.

22 (H) NATURAL GAS POLICY ACT OF 1978.—Section  
 23 502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C.  
 24 3412(b)) is amended, in the third sentence, by striking  
 25 “section 553(d)(3)” and inserting “section 553(h)(2)”.

1       (m) NOISE CONTROL ACT OF 1972.—Section 6(e)(2)  
 2 of the Noise Control Act of 1972 (42 U.S.C. 4905(e)(2))  
 3 is amended by striking “the first sentence of section  
 4 553(e) of title 5” and inserting “section 553(e)(4)(A) of  
 5 title 5”.

6       (n) POISON PREVENTION PACKAGING ACT OF  
 7 1970.—The Poison Prevention Packaging Act of 1970 (15  
 8 U.S.C. 1471 et seq.) is amended—

9           (1) in section 5(a) (15 U.S.C. 1474(a)), in the  
 10 first sentence, by striking “other than paragraph  
 11 (3)(B) of the last sentence of subsection (b) of such  
 12 section” and inserting “other than subsection (g)(3)  
 13 of such section”; and

14           (2) in section 7(e)(2) (15 U.S.C. 1476(e)(2)),  
 15 by striking “section 553(b)” and inserting “section  
 16 553(c)”.

17       (o) POULTRY PRODUCTS INSPECTION ACT.—Section  
 18 14(e) of the Poultry Products Inspection Act (21 U.S.C.  
 19 463(e)) is amended by striking “section 553(e) of title 5,  
 20 United States Code” and inserting “section 553(e)(4) of  
 21 title 5, United States Code,”.

22       (p) RURAL ELECTRIFICATION ACT OF 1936.—Sec-  
 23 tion 206(a)(1) of the Rural Electrification Act of 1936  
 24 (7 U.S.C. 927(a)(1)) is amended by striking “subsections



1 (b) through (e))” and inserting “subsections (b) through  
2 (k))”.

3 (q) SOCIAL SECURITY ACT.—The Social Security Act  
4 (42 U.S.C. 301 et seq.) is amended—

5 (1) in section 221(j) (42 U.S.C. 421(j)), in the  
6 flush text following paragraph (3), by striking “in  
7 accordance with section 553(b)(A) of title 5, United  
8 States Code” and all that follows through “and  
9 statements” and inserting “in accordance with sec-  
10 tion 553(g)(2) of title 5, United States Code, of  
11 guidance or rules of agency organization, procedure,  
12 or practice relating to consultative examinations if  
13 such guidance and rules”; and

14 (2) in section 1871(b)(2) (42 U.S.C.  
15 1395hh(b)(2)), by striking subparagraph (C) and in-  
16 serting the following:

17 “(C) subsection (e) of section 553 of title  
18 5, United States Code, does not apply pursuant  
19 to subsection (g)(3) of such section.”.

20 (r) TITLE 5, UNITED STATES CODE.—Title 5,  
21 United States Code, is amended—

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

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

4           (3) in section 562(11), by striking “means ‘rule  
 5           making’ as that term is defined in section 551(5) of  
 6           this title” and inserting “has the meaning given the  
 7           term in section 551”;

8           (4) in section 601(2), by striking “section  
 9           553(b)” and inserting “section 553(e)”;

10          (5) in section 1103(b)(1), by striking “section  
 11          553(b)(1), (2), and (3)” and inserting “section  
 12          553(e)”; and

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

16          (s) TITLE 41, UNITED STATES CODE.—Section  
 17          8503(a)(2) of title 41, United States Code, is amended  
 18          by striking “section 553(b) to (c)” and inserting “section  
 19          553”.

20          (t) TITLE 46, UNITED STATES CODE.—Section  
 21          14104(b) of title 46, United States Code, is amended, in  
 22          the second sentence, by striking “shall be considered to  
 23          be an interpretive regulation for purposes of section 553  
 24          of title 5” and inserting “shall be subject to section 553  
 25          of title 5”.

1       ~~(ii) TOXIC SUBSTANCES CONTROL ACT.—Section~~  
 2   19(e)(1)(B)(ii) of the Toxic Substances Control Act (15  
 3   U.S.C. 2618(e)(1)(B)(ii)) is amended by striking “section  
 4   553(e)” and inserting “section 553(f)(2)”.

5   **SECTION 1. SHORT TITLE.**

6       *This Act may be cited as the “Regulatory Account-*  
 7   *ability Act of 2017”.*

8   **SEC. 2. DEFINITIONS.**

9       *Section 551 of title 5, United States Code, is amend-*  
 10   *ed—*

11           *(1) in paragraph (5), by striking “rule making”*  
 12       *and inserting “rulemaking”;*

13           *(2) in paragraph (6), by striking “rule making”*  
 14       *and inserting “rulemaking”;*

15           *(3) in paragraph (13), by striking “and” at the*  
 16       *end;*

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

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

20           *“(15) ‘guidance’ means an agency statement of*  
 21       *general applicability that—*

22                   *“(A) is not intended to have the force and*  
 23                   *effect of law; and*

1           “(B) sets forth a policy on a statutory, reg-  
2           ulatory, or technical issue or an interpretation of  
3           a statutory or regulatory issue;

4           “(16) ‘high-impact rule’ means any rule that the  
5           Administrator determines is likely to cause an annual  
6           effect on the economy of \$1,000,000,000 or more, ad-  
7           justed once every 5 years to reflect increases in the  
8           Consumer Price Index for All Urban Consumers, as  
9           published by the Bureau of Labor Statistics of the De-  
10          partment of Labor;

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

13               “(A) an annual effect on the economy of  
14               \$100,000,000 or more, adjusted once every 5  
15               years to reflect increases in the Consumer Price  
16               Index for All Urban Consumers, as published by  
17               the Bureau of Labor Statistics of the Department  
18               of Labor;

19               “(B) a major increase in costs or prices for  
20               consumers, individual industries, Federal, State,  
21               local, or tribal government agencies, or geo-  
22               graphic regions; or

23               “(C) significant adverse effects on competi-  
24               tion, employment, investment, productivity, in-  
25               novation, public health and safety, or the ability

1       *of United States-based enterprises to compete*  
2       *with foreign-based enterprises in domestic and*  
3       *export markets;*

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

6               “(A) an annual effect on the economy of  
7       \$100,000,000 or more, adjusted once every 5  
8       years to reflect increases in the Consumer Price  
9       Index for All Urban Consumers, as published by  
10      the Bureau of Labor Statistics of the Department  
11      of Labor;

12             “(B) a major increase in costs or prices for  
13      consumers, individual industries, Federal, State,  
14      local, or tribal government agencies, or geo-  
15      graphic regions; or

16             “(C) significant adverse effects on competi-  
17      tion, employment, investment, productivity, in-  
18      novation, public health and safety, or the ability  
19      of United States-based enterprises to compete  
20      with foreign-based enterprises in domestic and  
21      export markets;

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

1           “(20) ‘Administrator’ means the Administrator  
2           of the Office of Information and Regulatory Affairs.”.

3   **SEC. 3. RULEMAKING.**

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

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

8           (2) in subsection (a), by striking “(a) This sec-  
9           tion applies” and inserting “(a) APPLICABILITY—  
10          This section applies”; and

11          (3) by striking subsections (b) through (e) and  
12          inserting the following:

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

16               “(1) *The legal authority under which a rule may*  
17               *be proposed, including whether rulemaking is re-*  
18               *quired by statute or is within the discretion of the*  
19               *agency.*

20               “(2) *The nature and significance of the problem*  
21               *the agency intends to address with a rule.*

22               “(3) *Whether existing Federal laws or rules have*  
23               *created or contributed to the problem the agency may*  
24               *address with a rule and, if so, whether those Federal*

1        *laws or rules could be amended or rescinded to ad-*  
 2        *dress the problem in whole or in part.*

3                *“(4) A reasonable number of alternatives for a*  
 4        *new rule that meet the statutory objective, including*  
 5        *substantial alternatives or other responses identified*  
 6        *by interested persons, with the consideration of 3 al-*  
 7        *ternatives presumed to be reasonable.*

8                *“(5) For any major rule or high-impact rule,*  
 9        *unless prohibited by law, the potential costs and bene-*  
 10       *fits associated with potential alternative rules and*  
 11       *other responses considered under paragraph (4), in-*  
 12       *cluding quantitative and qualitative analyses of—*

13                *“(A) the direct costs and benefits;*

14                *“(B) the nature and degree of risks ad-*  
 15        *dressed by the rule and the countervailing risks*  
 16        *that might be posed by agency action; and*

17                *“(C) to the extent practicable, the cumu-*  
 18        *lative and indirect costs and benefits.*

19        *“(c) NOTICE OF PROPOSED RULEMAKING.—*

20                *“(1) IN GENERAL.—If an agency determines that*  
 21        *the objectives of the agency require the agency to issue*  
 22        *a rule, the agency shall notify the Administrator and*  
 23        *publish a notice of proposed rulemaking in the Fed-*  
 24        *eral Register, which shall include—*

1           “(A) a statement of the time, place, and na-  
2           ture of any public rulemaking proceedings;

3           “(B) reference to the legal authority under  
4           which the rule is proposed;

5           “(C) the text of the proposed rule;

6           “(D) a summary of information known to  
7           the agency concerning the considerations de-  
8           scribed in subsection (b); and

9           “(E) where otherwise consistent with appli-  
10          cable law, for any major rule or high-impact  
11          rule—

12               “(i) a reasoned preliminary expla-  
13               nation regarding how—

14                       “(I) the proposed rule meets the  
15                       statutory objectives; and

16                       “(II) the benefits of the proposed  
17                       rule justify the costs; and

18               “(ii) a discussion of—

19                       “(I) the costs and benefits of alter-  
20                       natives considered by the agency under  
21                       subsection (b)(4);

22                       “(II) whether the alternatives con-  
23                       sidered by the agency under subsection  
24                       (b)(4) meet relevant statutory objec-  
25                       tives; and



1                   “(III) *the reasons why the agency*  
2                   *did not propose an alternative consid-*  
3                   *ered by the agency under subsection*  
4                   *(b)(4).*

5                   “(2) *ACCESSIBILITY.—*

6                   “(A) *IN GENERAL.—Except as provided in*  
7                   *subparagraph (B), not later than the date on*  
8                   *which an agency publishes a notice of proposed*  
9                   *rulemaking under paragraph (1), all studies,*  
10                  *models, scientific literature, and other informa-*  
11                  *tion developed or relied upon by the agency, and*  
12                  *actions taken by the agency to obtain that infor-*  
13                  *mation, in connection with the determination of*  
14                  *the agency to propose the rule that is the subject*  
15                  *of the rulemaking shall be placed in the docket*  
16                  *for the proposed rule and made accessible to the*  
17                  *public.*

18                  “(B) *EXCEPTION.—Subparagraph (A) shall*  
19                  *not apply with respect to information that is ex-*  
20                  *empt from disclosure under section 552(b).*

21                  “(3) *INFORMATION QUALITY.—If an agency pro-*  
22                  *poses a rule that rests upon scientific, technical, or*  
23                  *economic information, the agency shall propose the*  
24                  *rule on the basis of the best reasonably available sci-*  
25                  *entific, technical, or economic information.*

1 “(4) *PUBLIC COMMENT.*—

2 “(A) *IN GENERAL.*—After publishing a no-  
 3 tice of proposed rulemaking under paragraph  
 4 (1), an agency shall provide interested persons  
 5 an opportunity to participate in the rulemaking  
 6 through the submission of written material, data,  
 7 views, or arguments with or without opportunity  
 8 for oral presentation, except that—

9 “(i) if a public hearing is convened  
 10 under subsection (e), reasonable opportunity  
 11 for oral presentation shall be provided at  
 12 the public hearing as provided in subsection  
 13 (e); and

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

18 “(I) sections 556 and 557 shall  
 19 apply; and

20 “(II) the petition procedures of  
 21 subsection (e) shall not apply.

22 “(B) *TIMELINE.*—An agency shall provide  
 23 not less than 60 days, or, with respect to a pro-  
 24 posed major rule or a proposed high-impact rule,  
 25 not less than 90 days, for interested persons to

1           *submit written material, data, views, or argu-*  
 2           *ments under subparagraph (A).*

3           “(5) *CHANGE OF CLASSIFICATION AFTER PUBLI-*  
 4           *CATION OF NOTICE.—If, after an agency submits the*  
 5           *notification and publishes the notice of proposed rule-*  
 6           *making required under paragraph (1), a proposed*  
 7           *rule is determined to be a major rule or a high-im-*  
 8           *pact rule, the agency shall—*

9                     “(A) *publish a notice in the Federal Reg-*  
 10           *ister with respect to the change of the classifica-*  
 11           *tion of the rule; and*

12                    “(B) *allow interested persons an additional*  
 13           *opportunity of not less than 30 days to comment*  
 14           *on—*

15                             “(i) *the rule; and*

16                             “(ii) *the change of the classification of*  
 17           *the rule.*

18           “(6) *PROHIBITION ON CERTAIN COMMUNICA-*  
 19           *TIONS.—*

20                     “(A) *IN GENERAL.—Except as provided in*  
 21           *subparagraph (B), after an agency publishes a*  
 22           *notice of proposed rulemaking required under*  
 23           *paragraph (1), or after an agency publishes a*  
 24           *notice of initiation of rulemaking under sub-*  
 25           *section (d)(1)(B), the agency, and any indi-*

vidual acting in an official capacity on behalf of the agency, may not communicate, and a person who receives Federal funds from the agency may not use those funds to communicate, through written, oral, electronic, or other means, to the public with respect to the proposed rule in a manner that—

“(i) directly advocates, in support of or against the proposed rule, for the submission of information that will form part of the record for the proposed rule;

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

“(iii) is directly or indirectly for the purpose of publicity or propaganda within the United States in a manner that Congress has not authorized.

“(B) *EXCEPTION.*—The prohibition under subparagraph (A) shall not apply to a communication that requests comments on, or provides information regarding, a proposed rule in an impartial manner.

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

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

5                   “(A) establish an electronic docket for that  
6                   rulemaking, which may have a physical counter-  
7                   part; and

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

10                           “(i) briefly describe the subject and ob-  
11                           jectives of, and the problem to be solved by,  
12                           the rule;

13                           “(ii) reference the legal authority  
14                           under which the rule would be proposed;

15                           “(iii) invite interested persons to pro-  
16                           pose alternatives and other ideas regarding  
17                           how best to accomplish the objectives of the  
18                           agency in the most effective manner; and

19                           “(iv) indicate how interested persons  
20                           may submit written material for the docket.

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 public.

1           “(3) *APPLICABILITY.*—With respect to the alter-  
 2           *natives and other ideas proposed under paragraph*  
 3           *(1)(B)(iii)*—

4                   “(A) *the alternatives and other ideas are for*  
 5           *the benefit of*—

6                           “(i) *the agency receiving the alter-*  
 7                   *natives and other ideas; and*

8                           “(ii) *the public; and*

9                           “(B) *the agency receiving the alternatives*  
 10           *and other ideas may respond to the alternatives*  
 11           *and other ideas.*

12           “(4) *TIMETABLE.*—

13                   “(A) *IN GENERAL.*—With respect to a rule-  
 14           *making for a major rule or a high-impact rule,*  
 15           *the agency proposing the rule shall establish a*  
 16           *timetable for the rulemaking that*—

17                           “(i) *contains intermediate completion*  
 18                   *dates for actions of the agency, including*—

19                                   “(I) *the duration of the comment*  
 20                   *period associated with the notice of*  
 21                   *initiation published under paragraph*  
 22                   *(1)(B), including the date on which*  
 23                   *that comment period shall end; and*

24                                   “(II) *if, after reviewing comments*  
 25                   *submitted during the period described*

1                   *in subclause (I), the agency determines*  
2                   *that the agency shall proceed to a rule-*  
3                   *making—*

4                   “*(aa) the anticipated date on*  
5                   *which the agency shall publish the*  
6                   *notice required under subsection*  
7                   *(c)(1) with respect to the rule; and*

8                   “*(bb) the duration of the*  
9                   *comment period required under*  
10                  *subsection (c)(4), including the*  
11                  *date on which that comment pe-*  
12                  *riod shall end;*

13                  “*(ii) includes a final completion date*  
14                  *for actions of the agency; and*

15                  “*(iii) shall be published in the elec-*  
16                  *tronic docket established under paragraph*  
17                  *(1)(A) with respect to the rulemaking.*

18                  “*(B) CONSIDERATION OF FACTORS.—In es-*  
19                  *tablishing the timetable required under subpara-*  
20                  *graph (A), an agency shall consider relevant fac-*  
21                  *tors, including—*

22                  “*(i) the size and complexity of the rule-*  
23                  *making;*

24                  “*(ii) the resources available to the*  
25                  *agency;*

1           “(iii) the national significance of the  
2 rulemaking; and

3           “(iv) all statutory requirements that  
4 govern the timing of the rulemaking.

5           “(C) REPORT REQUIRED.—

6           “(i) IN GENERAL.—An agency that  
7 fails to meet the final completion date estab-  
8 lished under subparagraph (A)(ii) shall sub-  
9 mit to Congress and the Director of the Of-  
10 fice of Management and Budget a report re-  
11 garding why the agency failed to meet the  
12 completion date.

13           “(ii) CONTENTS; PUBLICATION IN FED-  
14 ERAL REGISTER.—A report submitted under  
15 clause (i) shall—

16           “(I) include an amended time-  
17 table for the rulemaking; and

18           “(II) be published—

19           “(aa) in the Federal Reg-  
20 ister; and

21           “(bb) in the electronic docket  
22 established under paragraph  
23 (1)(A) with respect to the rule-  
24 making.



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

8                   “(i) the updated completion date for  
 9                   the action; and

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

13           “(5) *NOTICE OF DETERMINATION OF OTHER*  
 14           *AGENCY COURSE.*—

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

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

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

1                   “(B) *CONTENTS.*—*A notice of determination*  
 2                   *of other agency course published under subpara-*  
 3                   *graph (A)(i) shall include—*

4                   “(i) *a description of the alternative re-*  
 5                   *sponse the agency has determined to adopt;*  
 6                   *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 AND*  
 11                  *CERTAIN MAJOR RULES.*—

12                  “(1) *PETITION FOR PUBLIC HEARING.*—

13                  “(A) *IN GENERAL.*—*Before the date on*  
 14                  *which the comment period closes with respect to*  
 15                  *a proposed high-impact rule or a proposed major*  
 16                  *rule described in section 551(18)(A), an inter-*  
 17                  *ested person may petition the agency that pro-*  
 18                  *posed the rule to hold a public hearing in ac-*  
 19                  *cordance with this subsection.*

20                  “(B) *PETITION FOR PUBLIC HEARING FOR*  
 21                  *HIGH-IMPACT RULES.*—

22                  “(i) *GRANTING OF PETITION.*—*Not*  
 23                  *later than 30 days after the date on which*  
 24                  *an agency receives a petition submitted*  
 25                  *under subparagraph (A) with respect to a*

1 *high-impact rule, the agency shall grant the*  
2 *petition if the petition shows that—*

3 “(I) *the proposed rule is based on*  
4 *conclusions with respect to 1 or more*  
5 *specific scientific, technical, economic,*  
6 *or other complex factual issues that are*  
7 *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 years,*  
11 *the interested person submitting the pe-*  
12 *tition could not have raised the dis-*  
13 *puted factual issues described in sub-*  
14 *clause (I) during the 5-year period*  
15 *preceding the date on which the peti-*  
16 *tion 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 the statutory pur-*  
25 *pose.*

1           “(ii) *DENIAL OF PETITION.*—If an  
2           agency denies a petition submitted under  
3           clause (i) in whole or in part, the agency  
4           shall include in the rulemaking record an  
5           explanation for the denial sufficient for ju-  
6           dicial review, including—

7                   “(I) findings by the agency that—

8                           “(aa) there is no genuine dis-  
9                           pute as to the factual issues raised  
10                          by the petition; or

11                          “(bb) with respect to a rule  
12                          that the agency is required to re-  
13                          issue not less frequently than once  
14                          every 3 years, the interested per-  
15                          son submitting the petition could  
16                          have raised the disputed factual  
17                          issues in the petition during the  
18                          5-year period preceding the date  
19                          on which the petition is sub-  
20                          mitted; and

21                          “(II) a reasoned determination by  
22                          the agency that the factual issues  
23                          raised by the petition, even if subject to  
24                          genuine dispute and not subject to sub-

1 *clause (I)(bb), will not have an effect*  
 2 *on—*

3 *“(aa) the costs and benefits*  
 4 *of the proposed rule; or*

5 *“(bb) whether the proposed*  
 6 *rule achieves the statutory pur-*  
 7 *pose.*

8 *“(iii) INCLUSION IN THE RECORD.—A*  
 9 *petition submitted under subparagraph (A)*  
 10 *with respect to a high-impact rule and the*  
 11 *decision of an agency with respect to the pe-*  
 12 *tition shall be included in the rulemaking*  
 13 *record.*

14 *“(C) PETITION FOR PUBLIC HEARING FOR*  
 15 *CERTAIN MAJOR RULES.—*

16 *“(i) IN GENERAL.—In the case of a*  
 17 *major rule described in section 551(18)(A),*  
 18 *any interested person may petition for a*  
 19 *hearing under this subsection on the*  
 20 *grounds and within the time limitation de-*  
 21 *scribed in subparagraph (B)(i).*

22 *“(ii) AGENCY AUTHORITY TO DENY PE-*  
 23 *TITION.—An agency may deny a petition*  
 24 *submitted to the agency under clause (i) if*  
 25 *the agency reasonably determines that—*

1 “(I) a hearing—

2 “(aa) would not advance the  
3 consideration of the proposed rule  
4 by the agency; or

5 “(bb) would, in light of the  
6 need for agency action, unreason-  
7 ably delay completion of the rule-  
8 making; or

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

17 “(iii) INCLUSION IN THE RECORD.—A  
18 petition submitted under clause (i) and the  
19 decision of an agency with respect to the pe-  
20 tition shall be included in the rulemaking  
21 record.

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

1           “(A) *the proposed rule to be considered at*  
 2           *the hearing; and*

3           “(B) *the factual issues to be considered at*  
 4           *the hearing.*

5           “(3) *HEARING REQUIREMENTS.—*

6           “(A) *LIMITED NATURE OF HEARING.—A*  
 7           *hearing held under this subsection shall be lim-*  
 8           *ited to—*

9           “(i) *the specific factual issues raised in*  
 10           *a petition granted in whole or in part*  
 11           *under paragraph (1); and*

12           “(ii) *any other factual issues the reso-*  
 13           *lution of which an agency, in the discretion*  
 14           *of the agency, determines will advance con-*  
 15           *sideration by the agency of the proposed*  
 16           *rule.*

17           “(B) *PROCEDURES.—*

18           “(i) *BURDEN OF PROOF.—Except as*  
 19           *otherwise provided by statute, a proponent*  
 20           *of a rule has the burden of proof in a hear-*  
 21           *ing held under this subsection.*

22           “(ii) *ADMISSION OF EVIDENCE.—In a*  
 23           *hearing held under this subsection, any doc-*  
 24           *umentary or oral evidence may be received,*  
 25           *except that an agency, as a matter of pol-*

1            *icy, shall provide for the exclusion of imma-*  
 2            *terial or unduly repetitious evidence.*

3            *“(iii) ADOPTION OF RULES GOVERNING*  
 4            *HEARINGS.—To govern a hearing held*  
 5            *under this subsection, each agency shall*  
 6            *adopt rules that provide for—*

7                    *“(I) the appointment of an agency*  
 8                    *official or administrative law judge to*  
 9                    *preside at the hearing;*

10                   *“(II) the presentation by inter-*  
 11                   *ested parties of relevant documentary*  
 12                   *or oral evidence, unless the evidence is*  
 13                   *immaterial or unduly repetitious;*

14                   *“(III) a reasonable and adequate*  
 15                   *opportunity for cross-examination by*  
 16                   *interested parties concerning genuinely*  
 17                   *disputed factual issues raised by the*  
 18                   *petition, provided that, in the case of*  
 19                   *multiple interested parties with the*  
 20                   *same or similar interests, the agency*  
 21                   *may require the use of common counsel*  
 22                   *where the common counsel may ade-*  
 23                   *quately represent the interests that will*  
 24                   *be significantly affected by the pro-*  
 25                   *posed rule; and*



1                   “(IV) *when appropriate, and to*  
 2                   *the extent practicable, the consolidation*  
 3                   *of proceedings with respect to multiple*  
 4                   *petitions submitted under this sub-*  
 5                   *section into a single hearing.*

6                   “(C) *RECORD OF HEARING.*—*A transcript*  
 7                   *of testimony and exhibits, together with all pa-*  
 8                   *pers and requests filed in the hearing, shall con-*  
 9                   *stitute the exclusive record for decision of the fac-*  
 10                   *tual issues addressed in a hearing held under*  
 11                   *this subsection.*

12                   “(4) *JUDICIAL REVIEW.*—

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

18                   “(B) *TIMING OF JUDICIAL REVIEW.*—*There*  
 19                   *shall be no judicial review of the disposition of*  
 20                   *a petition by an agency under this subsection*  
 21                   *until judicial review of the final action of the*  
 22                   *agency.*

23                   “(f) *FINAL RULES.*—

24                   “(1) *EFFECTIVENESS OF MAJOR OR HIGH-IMPACT*  
 25                   *RULE.*—

1           “(A) *IN GENERAL.*—*Except as provided in*  
 2           *subparagraph (B), in a rulemaking for a major*  
 3           *rule or a high-impact rule, an agency shall*  
 4           *adopt the most cost-effective rule that—*

5                     “(i) *is considered under subsection*  
 6                     *(b)(4); and*

7                     “(ii) *meets relevant statutory objec-*  
 8                     *tives.*

9           “(B) *EXCEPTION.*—*In a rulemaking for a*  
 10           *major rule or a high-impact rule, an agency*  
 11           *may adopt a rule that is more costly than the*  
 12           *most cost-effective alternative that would achieve*  
 13           *the relevant statutory objectives only if—*

14                    “(i) *the additional benefits of the more*  
 15                    *costly rule justify the additional costs of*  
 16                    *that rule;*

17                    “(ii) *the agency specifically identifies*  
 18                    *each additional benefit described in clause*  
 19                    *(i) and the cost of each such additional ben-*  
 20                    *efit; and*

21                    “(iii) *the agency explains why the*  
 22                    *agency adopted a rule that is more costly*  
 23                    *than the most cost-effective alternative.*

24           “(2) *PUBLICATION OF NOTICE OF FINAL RULE-*  
 25           *MAKING.*—*When an agency adopts a final rule, the*

1       agency shall publish a notice of final rulemaking in  
2       the *Federal Register*, which shall include—

3               “(A) a concise, general statement of the  
4               basis and purpose of the rule;

5               “(B) a reasoned determination by the agen-  
6               cy regarding the considerations described in sub-  
7               section (b);

8               “(C) a response to each significant issue  
9               raised in the comments on the proposed rule; and

10              “(D) with respect to a major rule or a high-  
11              impact rule, a reasoned determination by the  
12              agency that—

13                   “(i) the benefits of the rule advance the  
14                   relevant statutory objectives and justify the  
15                   costs of the rule; and

16                   “(ii)(I) no alternative considered  
17                   would achieve the relevant statutory objec-  
18                   tives in a more cost-effective manner than  
19                   the rule; or

20                   “(II) the adoption by the agency of a  
21                   more costly rule complies with paragraph  
22                   (1)(B).

23              “(3) *INFORMATION QUALITY*.—If an agency rule-  
24              making rests upon scientific, technical, or economic  
25              information, the agency shall adopt a final rule on

1     *the basis of the best reasonably available scientific,*  
 2     *technical, or economic information.*

3             “(4) *ACCESSIBILITY.*—

4                 “(A) *IN GENERAL.*—*Except as provided in*  
 5                 *subparagraph (B), not later than the date on*  
 6                 *which an agency publishes a notice of final rule-*  
 7                 *making under paragraph (2), all studies, models,*  
 8                 *scientific literature, and other information devel-*  
 9                 *oped or relied upon by the agency, and actions*  
 10                 *taken by the agency to obtain that information,*  
 11                 *in connection with the determination of the*  
 12                 *agency to finalize the rule that is the subject of*  
 13                 *the rulemaking shall be placed in the docket for*  
 14                 *the rule and made accessible to the public.*

15                 “(B) *EXCEPTION.*—*Subparagraph (A) shall*  
 16                 *not apply with respect to information that is ex-*  
 17                 *empt from disclosure under section 552(b).*

18             “(5) *RULES ADOPTED AT THE END OF A PRESI-*  
 19             *DENTIAL ADMINISTRATION.*—

20                 “(A) *IN GENERAL.*—*During the 60-day pe-*  
 21                 *riod beginning on a transitional inauguration*  
 22                 *day (as defined in section 3349a), with respect*  
 23                 *to any final rule that had been placed on file for*  
 24                 *public inspection by the Office of the Federal*  
 25                 *Register or published in the Federal Register as*

1       *of the date of the inauguration, but which had*  
 2       *not become effective by the date of the inaugura-*  
 3       *tion, the agency issuing the rule may, by order,*  
 4       *delay the effective date of the rule for not more*  
 5       *than 90 days for the purpose of obtaining public*  
 6       *comment on whether—*

7               *“(i) the rule should be amended or re-*  
 8               *scinded; or*

9               *“(ii) the effective date of the rule*  
 10              *should be further delayed.*

11              *“(B) OPPORTUNITY FOR COMMENT.—If an*  
 12              *agency delays the effective date of a rule under*  
 13              *subparagraph (A), the agency shall give the pub-*  
 14              *lic not less than 30 days to submit comments.*

15              *“(g) APPLICABILITY.—*

16              *“(1) PRIMACY OF CERTAIN RULEMAKING CONSID-*  
 17              *ERATIONS AND PROCEDURES IN OTHER FEDERAL*  
 18              *LAWS.—*

19              *“(A) CONSIDERATIONS.—If a rulemaking is*  
 20              *authorized under a Federal law that requires an*  
 21              *agency to consider, or prohibits an agency from*  
 22              *considering, a factor in a manner that is incon-*  
 23              *sistent with, or that conflicts with, the require-*  
 24              *ments under this section, for the purposes of this*  
 25              *section, the requirement or prohibition, as appli-*

1           *cable, in that other Federal law shall apply to*  
 2           *the agency in the rulemaking.*

3           “(B) *PROCEDURAL REQUIREMENTS.*—*If a*  
 4           *rulemaking is authorized under a Federal law*  
 5           *that requires an agency to follow or use, or pro-*  
 6           *hibits an agency from following or using, a pro-*  
 7           *cedure in a manner that is duplicative of, or*  
 8           *that conflicts with, a procedural requirement*  
 9           *under this section, for the purposes of this sec-*  
 10          *tion, the requirement or prohibition, as applica-*  
 11          *ble, in that other Federal law shall apply to the*  
 12          *agency in the rulemaking.*

13          “(2) *GUIDANCE AND RULES OF ORGANIZATION.*—  
 14          *Except as otherwise provided by law, this section*  
 15          *shall not apply to guidance or rules of agency organi-*  
 16          *zation, procedure, or practice.*

17          “(3) *EXCEPTIONS FOR GOOD CAUSE.*—

18                 “(A) *FINDING OF GOOD CAUSE.*—

19                         “(i) *IN GENERAL.*—*If an agency for*  
 20                         *good cause finds that compliance with sub-*  
 21                         *section (c), (d), (e), or (f)(2)(B) before*  
 22                         *issuing a final rule is unnecessary, imprac-*  
 23                         *ticable, or contrary to the public interest,*  
 24                         *that subsection shall not apply and the*  
 25                         *agency may issue the final rule or an in-*

1            *terim final rule, as applicable, under sub-*  
 2            *paragraph (B) or (C).*

3            “(ii) *INCORPORATION OF GOOD CAUSE*  
 4            *FINDING.—If an agency makes a finding*  
 5            *under clause (i), the agency shall include*  
 6            *that finding and a brief statement with re-*  
 7            *spect to the reasons for that finding in the*  
 8            *final rule or interim final rule, as applica-*  
 9            *ble, issued by the agency.*

10          “(B) *DIRECT FINAL RULES.—*

11            “(i) *IN GENERAL.—Except as provided*  
 12            *in clause (ii), if an agency makes a finding*  
 13            *under subparagraph (A)(i) that compliance*  
 14            *with subsection (c), (d), (e), or (f)(2)(B) be-*  
 15            *fore issuing a final rule is unnecessary, the*  
 16            *agency shall, before issuing the final rule—*

17            “(I) *publish in the Federal Reg-*  
 18            *ister the text of the final rule, the brief*  
 19            *statement required under subpara-*  
 20            *graph (A)(ii), and a notice of oppor-*  
 21            *tunity for public comment;*

22            “(II) *establish a comment period*  
 23            *of not less than 30 days for any inter-*  
 24            *ested person to submit written mate-*

1            *rial, data, views, or arguments with*  
 2            *respect to the final rule; and*

3            *“(III) provide notice of the date*  
 4            *on which the rule will take effect.*

5            *“(ii) EXCEPTION.—An agency that*  
 6            *made a finding described in clause (i) may*  
 7            *choose not to follow the requirements under*  
 8            *that clause if the agency determines that fol-*  
 9            *lowing the requirements would not expedite*  
 10           *the issuance of the final rule.*

11           *“(iii) ADVERSE COMMENTS.—If an*  
 12           *agency receives significant adverse com-*  
 13           *ments with respect to a rule during the*  
 14           *comment period established under clause*  
 15           *(i)(II), the agency shall—*

16           *“(I) withdraw the notice of final*  
 17           *rulemaking published by the agency*  
 18           *with respect to the rule; and*

19           *“(II) complete rulemaking in ac-*  
 20           *cordance with subsections (c), (d), (e),*  
 21           *and (f), as applicable.*

22           *“(C) INTERIM FINAL RULES.—*

23           *“(i) IN GENERAL.—If an agency for*  
 24           *good cause finds that compliance with sub-*  
 25           *section (c), (d), (e), or (f)(2)(B) before*



1           *issuing a final rule is impracticable or con-*  
2           *trary to the public interest, the agency shall*  
3           *issue an interim final rule by—*

4                     *“(I) publishing the interim final*  
5                     *rule and a request for public comment*  
6                     *in the portion of the Federal Register*  
7                     *relating to final rules; and*

8                     *“(II) providing a cross-reference*  
9                     *in the portion of the Federal Register*  
10                    *relating to proposed rules that requests*  
11                    *public comment with respect to the rule*  
12                    *not later than 60 days after the rule is*  
13                    *published under subclause (I).*

14                    *“(ii) INTERIM PERIOD.—*

15                             *“(I) IN GENERAL.—Not later than*  
16                             *180 days after the date on which an*  
17                             *agency issues an interim final rule*  
18                             *under clause (i), the agency shall—*

19                                     *“(aa) rescind the interim*  
20                                     *rule;*

21                                     *“(bb) initiate rulemaking in*  
22                                     *accordance with subsections (c)*  
23                                     *through (f); or*

24                                     *“(cc) take final action to*  
25                                     *adopt a final rule.*

1                   “(II) *NO FORCE OR EFFECT.*—If,  
 2                   *as of the end of the 180-day period de-*  
 3                   *scribed in subclause (I), an agency*  
 4                   *fails to take an action described in*  
 5                   *item (aa), (bb), or (cc) of that sub-*  
 6                   *clause, the interim final rule issued by*  
 7                   *the agency shall have no force or effect.*

8                   “(4) *EXEMPTION FOR MONETARY POLICY.*—This  
 9                   *section shall not apply to a rulemaking or to guid-*  
 10                  *ance that concerns monetary policy proposed or im-*  
 11                  *plemented by the Board of Governors of the Federal*  
 12                  *Reserve System or the Federal Open Market Com-*  
 13                  *mittee.*

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

20                         “(1) *for guidance; or*

21                         “(2) *as otherwise provided by an agency for good*  
 22                         *cause and as published with the rule.*

23                  “(i) *RIGHT TO PETITION AND REVIEW OF RULES.*—  
 24                  *Each agency shall—*

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

3           “(2) *on a continuing basis, invite interested per-*  
 4           *sons to submit, by electronic means, suggestions for*  
 5           *rules that warrant retrospective review and possible*  
 6           *modification or repeal.*

7           “(j) *RULEMAKING GUIDELINES.—*

8           “(1) *ASSESSMENT OF RULES.—*

9           “(A) *IN GENERAL.—The Administrator*  
 10           *shall establish guidelines for the assessment, in-*  
 11           *cluding the quantitative and qualitative assess-*  
 12           *ment, of—*

13                   “(i) *the costs and benefits of proposed*  
 14                   *and final rules;*

15                   “(ii) *the cost-effectiveness of proposed*  
 16                   *and final rules;*

17                   “(iii) *other economic issues that are*  
 18                   *relevant to rulemaking under this section or*  
 19                   *other sections of this part; and*

20                   “(iv) *risk assessments that are relevant*  
 21                   *to rulemaking under this section and other*  
 22                   *sections of this part.*

23           “(B) *AGENCY ANALYSIS OF RULES.—*

24                   “(i) *IN GENERAL.—The rigor of the*  
 25                   *cost-benefit analysis required by the guide-*

lines established under subparagraph (A) shall be commensurate, as determined by the Administrator, with the economic impact of a rule.

“(ii) *RISK ASSESSMENT GUIDELINES.*—Guidelines for a risk assessment described in subparagraph (A)(iv) shall include criteria for—

“(I) selecting studies and models;

“(II) evaluating and weighing evidence; and

“(III) conducting peer reviews.

“(C) *UPDATING GUIDELINES.*—Not less frequently than once every 10 years, the Administrator shall update the guidelines established under subparagraph (A) to enable each agency to use the best available techniques to quantify and evaluate present and future benefits, costs, other economic issues, and risks as objectively and accurately as practicable.

“(2) *SIMPLIFICATION OF RULES.*—

“(A) *ISSUANCE OF GUIDELINES.*—The Administrator shall issue guidelines to promote coordination, simplification, and harmonization of agency rules during the rulemaking process.

1           “(B) *REQUIREMENTS.*—*The guidelines*  
 2           *issued by the Administrator under subparagraph*  
 3           *(A) shall advise each agency to—*

4                   “(i) *avoid rules that are inconsistent*  
 5                   *or incompatible with, or duplicative of,*  
 6                   *other regulations of the agency and those of*  
 7                   *other agencies; and*

8                   “(ii) *draft the rules of the agency to be*  
 9                   *simple and easy to understand, with the*  
 10                   *goal of minimizing the potential for uncer-*  
 11                   *tainty and litigation arising from the un-*  
 12                   *certainty.*

13           “(3) *CONSISTENCY IN RULEMAKING.*—

14                   “(A) *IN GENERAL.*—*To promote consistency*  
 15                   *in rulemaking, the Administrator shall—*

16                   “(i) *issue guidelines to ensure that*  
 17                   *rulemaking conducted in whole or in part*  
 18                   *under procedures specified in provisions of*  
 19                   *law other than those under this section con-*  
 20                   *form with the procedures set forth in this*  
 21                   *section to the fullest extent allowed by law;*  
 22                   *and*

23                   “(ii) *issue guidelines for the conduct of*  
 24                   *hearings under subsection (e), which shall*

1                   *provide a reasonable opportunity for cross-*  
 2                   *examination.*

3                   “(B) *AGENCY ADOPTION OF REGULA-*  
 4                   *TIONS.—Each agency shall adopt regulations for*  
 5                   *the conduct of hearings consistent with the guide-*  
 6                   *lines issued under this paragraph.*

7                   “(k) *AGENCY GUIDANCE; PROCEDURES TO ISSUE*  
 8                   *MAJOR GUIDANCE; AUTHORITY TO ISSUE GUIDELINES FOR*  
 9                   *ISSUANCE OF GUIDANCE.—*

10                  “(1) *IN GENERAL.—Agency guidance shall—*

11                    “(A) *not be used by an agency to foreclose*  
 12                    *consideration of issues as to which the guidance*  
 13                    *expresses a conclusion;*

14                    “(B) *state that the guidance is not legally*  
 15                    *binding; and*

16                    “(C) *at the time the guidance is issued, or*  
 17                    *upon request, be made available by the issuing*  
 18                    *agency to interested persons and the public.*

19                   “(2) *PROCEDURES TO ISSUE MAJOR GUID-*  
 20                    *ANCE.—Before issuing any major guidance, an agen-*  
 21                    *cy shall—*

22                    “(A) *make and document a reasoned deter-*  
 23                    *mination that—*

1                   “(i) *such guidance is understandable*  
 2                   *and complies with relevant statutory objec-*  
 3                   *tives and regulatory provisions; and*

4                   “(ii) *identifies the costs and benefits,*  
 5                   *including all costs and benefits to be consid-*  
 6                   *ered during a rulemaking under subsection*  
 7                   *(b), of requiring conduct conforming to such*  
 8                   *guidance and assures that such benefits jus-*  
 9                   *tify such costs; and*

10                  “(B) *confer with the Administrator on the*  
 11                  *issuance of the major guidance to ensure that the*  
 12                  *guidance—*

13                         “(i) *is reasonable;*

14                         “(ii) *is understandable;*

15                         “(iii) *is consistent with relevant statu-*  
 16                         *tory and regulatory provisions and require-*  
 17                         *ments or practices of other agencies;*

18                         “(iv) *does not produce costs that are*  
 19                         *unjustified by the benefits of the major*  
 20                         *guidance; and*

21                         “(v) *is otherwise appropriate.*

22                  “(3) *ISSUANCE OF UPDATED GUIDANCE.—*

23                         “(A) *IN GENERAL.—The Administrator*  
 24                         *shall issue updated guidelines for use by agencies*  
 25                         *in the issuance of guidance documents.*

1           “(B) *REQUIREMENTS.*—*The guidelines*  
 2           *issued by the Administrator under subparagraph*  
 3           *(A) shall advise each agency—*

4                   “(i) *not to issue guidance documents*  
 5                   *that are inconsistent or incompatible with,*  
 6                   *or duplicative of, other rules of the agency*  
 7                   *and those of other agencies;*

8                   “(ii) *to draft the guidance documents*  
 9                   *of the agency to be simple and easy to un-*  
 10                   *derstand, with the goal of minimizing the*  
 11                   *potential for uncertainty and litigation*  
 12                   *arising from the uncertainty; and*

13                   “(iii) *how to develop and implement a*  
 14                   *strategy to ensure the proper use of guid-*  
 15                   *ance by the agency.*

16           “(l) *MAJOR RULE AND HIGH-IMPACT RULE FRAME-*  
 17           *WORKS.*—

18                   “(1) *IN GENERAL.*—*Beginning on the date that*  
 19                   *is 180 days after the date of enactment of this sub-*  
 20                   *section, when an agency publishes in the Federal Reg-*  
 21                   *ister—*

22                   “(A) *a proposed major rule or a proposed*  
 23                   *high-impact rule, the agency shall include a po-*  
 24                   *tential framework for assessing the rule, which*  
 25                   *shall include a general statement of how the*



1       *agency intends to measure the effectiveness of the*  
2       *rule; or*

3               *“(B) a final major rule or a final high-im-*  
4       *pact rule, the agency shall include a framework*  
5       *for assessing the rule under paragraph (2),*  
6       *which shall include—*

7               *“(i) a clear statement of the regulatory*  
8       *objectives of the rule, including a summary*  
9       *of the benefit and cost of the rule;*

10              *“(ii) the methodology by which the*  
11       *agency plans to analyze the rule, including*  
12       *metrics by which the agency can measure—*

13              *“(I) the effectiveness and benefits*  
14       *of the rule in producing the regulatory*  
15       *objectives of the rule; and*

16              *“(II) the impacts, including any*  
17       *costs, of the rule on regulated and other*  
18       *impacted entities;*

19              *“(iii) a plan for gathering data re-*  
20       *garding the metrics described in clause (ii)*  
21       *on an ongoing basis, or at periodic times,*  
22       *including a method by which the agency*  
23       *will invite the public to participate in the*  
24       *review process and seek input from other*  
25       *agencies; and*

1           “(iv) a specific timeframe, as appro-  
 2           priate to the rule and not more than 10  
 3           years after the effective date of the rule,  
 4           under which the agency shall conduct the  
 5           assessment of the rule in accordance with  
 6           paragraph (2)(A).

7           “(2) ASSESSMENT.—

8           “(A) IN GENERAL.—Each agency shall as-  
 9           sess the data collected under paragraph  
 10          (1)(B)(iii), using the methodology set forth in  
 11          paragraph (1)(B)(ii) or any other appropriate  
 12          methodology developed after the issuance of a  
 13          final major rule or a final high-impact rule to  
 14          better determine whether the regulatory objective  
 15          was achieved, with respect to the rule—

16               “(i) to analyze how the actual benefits  
 17               and costs of the rule may have varied from  
 18               those anticipated at the time the rule was  
 19               issued; and

20               “(ii) to determine whether—

21                       “(I) the rule is accomplishing the  
 22                       regulatory objective of the rule;

23                       “(II) the rule has been rendered  
 24                       unnecessary, taking into consider-  
 25                       ation—

1                   “(aa) changes in the subject  
2                   area affected by the rule; and

3                   “(bb) whether the rule over-  
4                   laps, duplicates, or conflicts  
5                   with—

6                   “(AA) other rules; or

7                   “(BB) to the extent fea-  
8                   sible, State and local govern-  
9                   ment regulations;

10                  “(III) the rule needs to be modi-  
11                  fied in order to accomplish the regu-  
12                  latory objective; and

13                  “(IV) other alternatives to the rule  
14                  or modification of the rule could better  
15                  achieve the regulatory objective while  
16                  imposing a smaller burden on society  
17                  or increase cost-effectiveness, taking  
18                  into consideration any cost already in-  
19                  curred.

20                  “(B) *DIFFERENT METHODOLOGY.*—If an  
21                  agency uses a methodology other than the meth-  
22                  odology under paragraph (1)(B)(ii) to assess  
23                  data under subparagraph (A), the agency shall  
24                  include as part of the notice required to be pub-  
25                  lished under subparagraph (D) an explanation

1           *of the changes in circumstances that necessitated*  
 2           *the use of that other methodology.*

3           “(C) *SUBSEQUENT ASSESSMENTS.*—

4                   “(i) *IN GENERAL.*—*Except as provided*  
 5                   *in clause (ii), if, after an assessment of a*  
 6                   *major rule or a high-impact rule under sub-*  
 7                   *paragraph (A), an agency determines that*  
 8                   *the rule will remain in effect with or with-*  
 9                   *out modification, the agency shall—*

10                           “(I) *determine a specific time, as*  
 11                           *appropriate to the rule and not more*  
 12                           *than 10 years after the date on which*  
 13                           *the agency completes the assessment,*  
 14                           *under which the agency shall conduct*  
 15                           *another assessment of the rule in ac-*  
 16                           *cordance with subparagraph (A); and*

17                           “(II) *if the assessment conducted*  
 18                           *under subclause (I) does not result in*  
 19                           *a repeal of the rule, periodically assess*  
 20                           *the rule in accordance with subpara-*  
 21                           *graph (A) to ensure that the rule con-*  
 22                           *tinues to meet the regulatory objective.*

23                   “(ii) *EXEMPTION.*—*The Administrator*  
 24                   *may exempt an agency from conducting a*  
 25                   *subsequent assessment of a rule under clause*

1           *(i) if the Administrator determines that*  
 2           *there is a foreseeable and apparent need for*  
 3           *the rule beyond the timeframe required*  
 4           *under clause (i)(I).*

5           “(D) *PUBLICATION.*—*Not later than 180*  
 6           *days after the date on which an agency completes*  
 7           *an assessment of a major rule or a high-impact*  
 8           *rule under subparagraph (A), the agency shall*  
 9           *publish a notice of availability of the results of*  
 10           *the assessment in the Federal Register, including*  
 11           *the specific time for any subsequent assessment of*  
 12           *the rule under subparagraph (C)(i), if applica-*  
 13           *ble.*

14           “(3) *OIRA OVERSIGHT.*—*The Administrator*  
 15           *shall—*

16                 “(A) *issue guidance for agencies regarding*  
 17                 *the development of the framework under para-*  
 18                 *graph (1) and the conduct of the assessments*  
 19                 *under paragraph (2)(A);*

20                 “(B) *oversee the timely compliance of agen-*  
 21                 *cies with this subsection;*

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

24                         “(i) *published promptly on a central-*  
 25                         *ized Federal website; and*

1                   “(ii) noticed in the *Federal Register* in  
2                   accordance with paragraph (2)(D);

3                   “(D) encourage and assist agencies to  
4                   streamline and coordinate the assessment of  
5                   major rules or high-impact rules with similar or  
6                   related regulatory objectives;

7                   “(E) exempt an agency from including the  
8                   framework required under paragraph (1)(B)  
9                   when publishing a final major rule or a final  
10                  high-impact rule if the Administrator determines  
11                  that compliance with paragraph (1)(B) is unnec-  
12                  essary, impracticable, or contrary to the public  
13                  interest, as described in subsection (g)(3)(A)(i);  
14                  and

15                  “(F) extend the deadline specified by an  
16                  agency for an assessment of a major rule or a  
17                  high-impact rule under paragraph (1)(B)(iv) or  
18                  paragraph (2)(C)(i)(I) for a period of not more  
19                  than 90 days if the agency justifies why the  
20                  agency is unable to complete the assessment by  
21                  that deadline.

22                  “(4) *RULE OF CONSTRUCTION.*—Nothing in this  
23                  subsection shall be construed to affect—

24                  “(A) the authority of an agency to assess or  
25                  modify a major rule or a high-impact rule of the

1        *agency earlier than the end of the timeframe*  
 2        *specified for the rule under paragraph*  
 3        *(1)(B)(iv); or*

4                *“(B) any other provision of law that re-*  
 5        *quires an agency to conduct retrospective reviews*  
 6        *of rules issued by the agency.*

7        *“(5) APPLICABILITY.—*

8                *“(A) IN GENERAL.—This subsection shall*  
 9        *not apply to—*

10                *“(i) a major rule or a high-impact rule*  
 11        *of an agency—*

12                *“(I) that the Administrator re-*  
 13        *viewed before the date of enactment of*  
 14        *this subsection;*

15                *“(II) for which the agency is re-*  
 16        *quired to conduct a retrospective re-*  
 17        *view under any other provision of law*  
 18        *that meets or exceeds the requirements*  
 19        *of this subsection, as determined by the*  
 20        *Administrator; or*

21                *“(III) for which the authorizing*  
 22        *statute is subject to periodic reauthor-*  
 23        *ization by Congress not less frequently*  
 24        *than once every 10 years;*

1                   “(ii) interpretative rules, general state-  
2                   ments of policy, or rules of agency organiza-  
3                   tion, procedure, or practice;

4                   “(iii) routine and administrative rules;  
5                   or

6                   “(iv) a rule that is reviewed under sec-  
7                   tion 2222 of the Economic Growth and Reg-  
8                   ulatory Paperwork Reduction Act of 1996  
9                   (12 U.S.C. 3311).

10                  “(B) *DIRECT AND INTERIM FINAL MAJOR*  
11                  *RULE OR HIGH-IMPACT RULE.*—In the case of a  
12                  major rule or a high-impact rule of an agency  
13                  for which the agency is not required to issue a  
14                  notice of proposed rulemaking in response to an  
15                  emergency or a statutorily imposed deadline, the  
16                  agency shall publish the framework required  
17                  under paragraph (1)(B) in the Federal Register  
18                  not later than 180 days after the date on which  
19                  the agency publishes the rule.

20                  “(6) *RECOMMENDATIONS TO CONGRESS.*—If,  
21                  under an assessment conducted under paragraph (2),  
22                  an agency determines that a major rule or a high-im-  
23                  pact rule should be modified or repealed, the agency  
24                  may submit to Congress recommendations for legisla-  
25                  tion to amend applicable provisions of law if the



1        *agency is prohibited from modifying or repealing the*  
 2        *rule under another provision of law.*

3            “(7) *JUDICIAL REVIEW.*—

4            “(A) *IN GENERAL.*—*Judicial review of*  
 5        *agency compliance with this subsection is limited*  
 6        *to whether an agency—*

7            “(i) *published the framework for assess-*  
 8        *ment of a major rule or a high-impact rule*  
 9        *in accordance with paragraph (1); or*

10          “(ii) *completed and published the re-*  
 11        *quired assessment of a major rule or a high-*  
 12        *impact rule in accordance with subpara-*  
 13        *graphs (A) and (D) of paragraph (2).*

14          “(B) *REMEDY AVAILABLE.*—*In granting re-*  
 15        *lief in an action brought under subparagraph*  
 16        *(A), a court may only issue an order remanding*  
 17        *the major rule or the high-impact rule, as appli-*  
 18        *cable, to the agency to comply with paragraph*  
 19        *(1) or subparagraph (A) or (D) of paragraph*  
 20        *(2), as applicable.*

21          “(C) *EFFECTIVE DATE OF MAJOR RULE.*—  
 22        *If, in an action brought under subparagraph*  
 23        *(A)(i), a court determines that the agency did*  
 24        *not comply, the major rule or the high-impact*

1           *rule, as applicable, shall take effect notwith-*  
 2           *standing any order issued by the court.*

3           “(D) ADMINISTRATOR.—Any determination,  
 4           action, or inaction of the Administrator under  
 5           this subsection shall not be subject to judicial re-  
 6           view.”.

7   **SEC. 4. SCOPE OF REVIEW.**

8           Section 706 of title 5, United States Code, is amend-  
 9   ed—

10           (1) in the first sentence of the matter preceding  
 11          paragraph (1), by striking “To the extent necessary”  
 12          and inserting “(a) IN GENERAL.—To the extent nec-  
 13          essary”; and

14           (2) in subsection (a), as so designated—

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

17           (B) in paragraph (2)—

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

22           (ii) in subparagraph (F), by striking  
 23          the period at the end and inserting “; and”;  
 24          and

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

3                   “(3) with respect to the review of a high-impact  
 4                   rule, as defined in section 551(16), determine whether  
 5                   the factual findings of the agency issuing the rule are  
 6                   supported by substantial evidence.

7                   “(b) *REVIEW OF ENTIRE RECORD; PREJUDICIAL*  
 8                   *ERROR.*—In making a determination under subsection (a),  
 9                   the court shall review the whole record or those parts of it  
 10                  cited by a party, and due account shall be taken of the rule  
 11                  of prejudicial error.

12                  “(c) *PRECLUSION OF REVIEW.*—The determination of  
 13                  whether a rule is a major rule within the meaning of sub-  
 14                  paragraphs (B) and (C) of section 551(18) shall not be sub-  
 15                  ject to judicial review.

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

19                  “(e) *AGENCY INTERPRETATION OF RULES.*—The  
 20                  weight that a reviewing court gives an interpretation by  
 21                  an agency of a rule of that agency shall depend on the thor-  
 22                  oughness evident in the consideration of the rule by the  
 23                  agency, the validity of the reasoning of the agency, and the  
 24                  consistency of the interpretation with earlier and later pro-  
 25                  nouncements.”.

1 **SEC. 5. ADDED DEFINITIONS.**

2       *Section 701(b) of title 5, United States Code, is amend-*  
 3 *ed—*

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

6           *(2) by redesignating paragraph (2) as para-*  
 7 *graph (3);*

8           *(3) by inserting after paragraph (1) the fol-*  
 9 *lowing:*

10           *“(2) ‘guidance’ has the meaning given the term*  
 11 *in section 551;”;*

12           *(4) in paragraph (3), as so redesignated, by*  
 13 *striking the period at the end and inserting “; and”;*  
 14 *and*

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

16           *“(4) ‘substantial evidence’ means such relevant*  
 17 *evidence as a reasonable mind might accept as ade-*  
 18 *quate to support a conclusion in light of the record*  
 19 *considered as a whole.”.*

20 **SEC. 6. APPLICATION.**

21       *The amendments made by this Act to sections 553,*  
 22 *701(b), and 706 of title 5, United States Code, shall not*  
 23 *apply to any rulemaking, as defined in section 551 of title*  
 24 *5, United States Code, as amended by section 2 of this Act,*  
 25 *that is pending or completed as of the date of enactment*  
 26 *of this Act.*

1 **SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.**

2 (a) *CONSUMER PRODUCT SAFETY ACT*.—Section 9(i)  
 3 of the Consumer Product Safety Act (15 U.S.C. 2058(i))  
 4 is amended, in the first sentence, by striking “section  
 5 553(e)” and inserting “section 553(i)”.

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

12 (c) *ENDANGERED SPECIES ACT OF 1973*.—Section  
 13 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C.  
 14 1533(b)(3)) is amended—

15 (1) in subparagraph (A), in the first sentence, by  
 16 striking “section 553(e)” and inserting “section  
 17 553(i)”; and

18 (2) in subparagraph (D)(i), in the first sentence,  
 19 by striking “section 553(e)” and inserting “section  
 20 553(i)”.

21 (d) *EXPEDITED FUNDS AVAILABILITY ACT*.—Section  
 22 609(a) of the Expedited Funds Availability Act (12 U.S.C.  
 23 4008(a)) is amended, in the matter preceding paragraph  
 24 (1), by striking “section 553(c)” and inserting “section  
 25 553”.

1       (e) *FEDERAL HAZARDOUS SUBSTANCES ACT*.—Sec-  
 2       tion 3 of the Federal Hazardous Substances Act (15 U.S.C.  
 3       1262) is amended—

4               (1) in subsection (e)(1), by striking “(other than  
 5       clause (B) of the last sentence of subsection (b) of such  
 6       section) of title 5 of the United States Code” and in-  
 7       serting “of title 5, United States Code, other than sub-  
 8       section (g)(3) of such section,”; and

9               (2) in subsection (j), by striking “section 553(e)”  
 10       and inserting “section 553(i)”.

11       (f) *FLAMMABLE FABRICS ACT*.—The Flammable Fab-  
 12       rics Act (15 U.S.C. 1191 et seq.) is amended—

13               (1) in section 4(k) (15 U.S.C. 1193(k)), in the  
 14       first sentence, by striking “section 553(e)” and insert-  
 15       ing “section 553(i)”; and

16               (2) in section 16(c)(2) (15 U.S.C. 1203(c)(2)), by  
 17       striking “section 553(b)” and inserting “section  
 18       553(c)”.

19       (g) *GENERAL EDUCATION PROVISIONS ACT*.—Section  
 20       411 of the General Education Provisions Act (20 U.S.C.  
 21       1221e-4) is amended, in the second sentence, by striking  
 22       “Notwithstanding the exception provided under section  
 23       553(b) of title 5, such” and inserting “Such”.

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

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

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

14       (i) *MARINE MAMMAL PROTECTION ACT OF 1972.*—  
 15   Section 109(d)(2) of the Marine Mammal Protection Act  
 16   of 1972 (16 U.S.C. 1379(d)(2)) is amended, in the second  
 17   sentence, by striking “subsection (d) of such section 553”  
 18   and inserting “subsection (h) of such section 553”.

19       (j) *McKINNEY-VENTO HOMELESS ASSISTANCE ACT.*—  
 20   Section 433 of the McKinney-Vento Homeless Assistance Act  
 21   (42 U.S.C. 11387) is amended, in the second sentence, by  
 22   striking “(notwithstanding subsections (a)(2), (b)(B), and  
 23   (d)(3) of such section)” and inserting “(notwithstanding  
 24   subsections (a)(2), (g)(3), and (h)(2) of such section)”.

1       (k) *NATIVE AMERICAN PROGRAMS ACT OF 1974*.—Sec-  
 2     tion 814 of the *Native American Programs Act of 1974* (42  
 3     U.S.C. 2992b–1) is amended—

4             (1) in subsection (b)—

5                 (A) in paragraph (1), by striking “Sub-  
 6     paragraph (A) of the last sentence of section  
 7     553(b) of title 5, United States Code, shall not  
 8     apply with respect to any interpretative rule or  
 9     general statement of policy” and inserting “Sec-  
 10    tion 553(c) of title 5, United States Code, shall  
 11    apply with respect to guidance”;

12             (B) in paragraph (2)—

13                 (i) in the matter preceding subpara-  
 14     graph (A), by striking “Subparagraph (B)  
 15     of the last sentence of section 553(b)” and  
 16     inserting “Section 553(g)(3)”; and

17                 (ii) by striking “an interpretative rule  
 18     or a general statement of policy” and in-  
 19     serting “guidance”; and

20             (C) in paragraph (3), in the matter pre-  
 21     ceding subparagraph (A)—

22                 (i) by striking “The first 2 sentences of  
 23     section 553(b)” and inserting “Section  
 24     553(c)”; and



1                   (ii) by striking “an interpretative rule,  
2                   a general statement of policy,” and insert-  
3                   ing “guidance”;

4                   (2) in subsection (c)—

5                   (A) in the matter preceding paragraph  
6                   (1)—

7                   (i) by striking “section 553(d)” and  
8                   inserting “section 553(h)”; and

9                   (ii) by striking “an interpretative rule)  
10                  or general statement of policy” and insert-  
11                  ing “guidance)”; and

12                  (B) in the flush text following paragraph  
13                  (2), by striking “the first 2 sentences of section  
14                  553(b)” and inserting “section 553(c)”;

15                  (3) in subsection (d), by striking “an interpreta-  
16                  tive rule) and each general statement of policy” and  
17                  inserting “guidance)”;

18                  (4) in subsection (e)—

19                  (A) by striking “any interpretative rule) or  
20                  a general statement of policy” and inserting  
21                  “guidance)”; and

22                  (B) by striking “or such general statement  
23                  of policy”;

24                  (5) in subsection (f)—

1           (A) by striking “an interpretative rule) or  
 2           a general statement of policy” and inserting  
 3           “guidance”); and

4           (B) by striking “or such general statement  
 5           of policy”; and

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

7           “(g) In this section, the term ‘guidance’ has the mean-  
 8           ing given the term in section 551 of title 5, United States  
 9           Code.”.

10          (l) *NATURAL GAS POLICY ACT OF 1978*.—Section  
 11          502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C.  
 12          3412(b)) is amended, in the third sentence, by striking “sec-  
 13          tion 553(d)(3)” and inserting “section 553(h)(2)”.

14          (m) *NOISE CONTROL ACT OF 1972*.—Section 6(c)(2)  
 15          of the Noise Control Act of 1972 (42 U.S.C. 4905(c)(2)) is  
 16          amended by striking “the first sentence of section 553(c)  
 17          of title 5” and inserting “section 553(c)(4)(A) of title 5”.

18          (n) *POISON PREVENTION PACKAGING ACT OF 1970*.—  
 19          The Poison Prevention Packaging Act of 1970 (15 U.S.C.  
 20          1471 et seq.) is amended—

21               (1) in section 5(a) (15 U.S.C. 1474(a)), in the  
 22               first sentence, by striking “other than paragraph  
 23               (3)(B) of the last sentence of subsection (b) of such  
 24               section” and inserting “other than subsection (g)(3) of  
 25               such section”; and

1           (2) in section 7(c)(2) (15 U.S.C. 1476(c)(2)), by  
 2       striking “section 553(b)” and inserting “section  
 3       553(c)”.

4       (o) *POULTRY PRODUCTS INSPECTION ACT*.—Section  
 5       14(c) of the *Poultry Products Inspection Act* (21 U.S.C.  
 6       463(c)) is amended by striking “section 553(c) of title 5,  
 7       *United States Code*” and inserting “section 553(c)(4) of  
 8       title 5, *United States Code*,”.

9       (p) *RURAL ELECTRIFICATION ACT OF 1936*.—Section  
 10      206(a)(1) of the *Rural Electrification Act of 1936* (7 U.S.C.  
 11      927(a)(1)) is amended by striking “subsections (b) through  
 12      (e)” and inserting “subsections (b) through (k)”.

13      (q) *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 ac-  
 17       cordance with section 553(b)(A) of title 5, *United*  
 18       *States Code*” and all that follows through “and state-  
 19       ments” and inserting “in accordance with section  
 20       553(g)(2) of title 5, *United States Code*, of guidance  
 21       or rules of agency organization, procedure, or practice  
 22       relating to consultative examinations if such guidance  
 23       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 to  
6           subsection (g)(3) of such section.”.

7       (r) TITLE 5, UNITED STATES CODE.—Title 5, United  
8   States Code, is amended—

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

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

14          (3) in section 562(11), by striking “means ‘rule  
15   making’ as that term is defined in section 551(5) of  
16   this title” and inserting “has the meaning given the  
17   term in section 551”;

18          (4) in section 601(2), by striking “section  
19   553(b)” and inserting “section 553(c)”;

20          (5) in section 1103(b)(1), by striking “section  
21   553(b)(1), (2), and (3)” and inserting “section  
22   553(c)”;

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

1       (s) *TITLE 41, UNITED STATES CODE.—Section*  
2 *8503(a)(2) of title 41, United States Code, is amended by*  
3 *striking “section 553(b) to (e)” and inserting “section 553”.*

4       (t) *TITLE 46, UNITED STATES CODE.—Section*  
5 *14104(b) of title 46, United States Code, is amended, in*  
6 *the second sentence, by striking “shall be considered to be*  
7 *an interpretive regulation for purposes of section 553 of title*  
8 *5” and inserting “shall be subject to section 553 of title*  
9 *5”.*

10       (u) *TOXIC SUBSTANCES CONTROL ACT.—Section*  
11 *19(c)(1)(B)(ii) of the Toxic Substances Control Act (15*  
12 *U.S.C. 2618(c)(1)(B)(ii)) is amended by striking “section*  
13 *553(c)” and inserting “section 553(f)(2)”.*

Calendar No. 312

115<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 951**

[Report No. 115-208]

**A BILL**

To reform the process by which Federal agencies  
analyze and formulate new regulations and guid-  
ance documents, and for other purposes.

FEBRUARY 14, 2018

Reported with an amendment