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1ST SESSION

H. R. 5

IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2017

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents, to clarify the nature of judicial review of agency interpretations, to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
 5 “Regulatory Accountability Act of 2017”.

6 (b) TABLE OF CONTENTS.—The table of contents for
 7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—REGULATORY ACCOUNTABILITY ACT

Sec. 101. Short title.

Sec. 102. Definitions.

Sec. 103. Rule making.

Sec. 104. Agency guidance; procedures to issue major guidance; presidential au-
 thority to issue guidelines for issuance of guidance.

Sec. 105. Hearings; presiding employees; powers and duties; burden of proof;
 evidence; record as basis of decision.

Sec. 106. Actions reviewable.

Sec. 107. Scope of review.

Sec. 108. Added definition.

Sec. 109. Effective date.

Sec. 110. Prompt issuance of OIRA guidelines.

TITLE II—SEPARATION OF POWERS RESTORATION ACT

Sec. 201. Short title.

Sec. 202. Judicial review of statutory and regulatory interpretations.

TITLE III—SMALL BUSINESS REGULATORY FLEXIBILITY
 IMPROVEMENTS ACT

Sec. 301. Short title.

Sec. 302. Clarification and expansion of rules covered by the regulatory flexi-
 bility act.

Sec. 303. Expansion of report of regulatory agenda.

Sec. 304. Requirements providing for more detailed analyses.

Sec. 305. Repeal of waiver and delay authority; additional powers of the Chief
 Counsel for advocacy.

Sec. 306. Procedures for gathering comments.

Sec. 307. Periodic review of rules.

Sec. 308. Judicial review of compliance with the requirements of the regulatory
 flexibility act available after publication of the final rule.

Sec. 309. Jurisdiction of court of appeals over rules implementing the regu-
 latory flexibility act.

Sec. 310. Establishment and approval of small business concern size standards
 by Chief Counsel for Advocacy.

Sec. 311. Clerical amendments.

Sec. 312. Agency preparation of guides.
 Sec. 313. Comptroller general report.

TITLE IV—REQUIRE EVALUATION BEFORE IMPLEMENTING
 EXECUTIVE WISHLISTS ACT

Sec. 401. Short title.
 Sec. 402. Relief pending review.

TITLE V—ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT

Sec. 501. Short title.
 Sec. 502. Office of information and regulatory affairs publication of information relating to rules.

TITLE VI—PROVIDING ACCOUNTABILITY THROUGH
 TRANSPARENCY ACT

Sec. 601. Short title.
 Sec. 602. Requirement to post a 100 word summary to regulations.gov.

1 **TITLE I—REGULATORY**
 2 **ACCOUNTABILITY ACT**

3 **SEC. 101. SHORT TITLE.**

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

6 **SEC. 102. DEFINITIONS.**

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

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

11 (2) in paragraph (14), by striking the period at
 12 the end and inserting a semicolon; and

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

14 “(15) ‘major rule’ means any rule that the Ad-
 15 ministrator of the Office of Information and Regu-
 16 latory Affairs determines is likely to impose—

1 “(A) an annual cost on the economy of
2 \$100,000,000 or more, adjusted annually for
3 inflation;

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

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

13 “(D) significant impacts on multiple sec-
14 tors of the economy;

15 “(16) ‘high-impact rule’ means any rule that
16 the Administrator of the Office of Information and
17 Regulatory Affairs determines is likely to impose an
18 annual cost on the economy of \$1,000,000,000 or
19 more, adjusted annually for inflation;

20 “(17) ‘negative-impact on jobs and wages rule’
21 means any rule that the agency that made the rule
22 or the Administrator of the Office of Information
23 and Regulatory Affairs determines is likely to—

24 “(A) in one or more sectors of the economy
25 that has a 6-digit code under the North Amer-

1 ican Industry Classification System, reduce em-
2 ployment not related to new regulatory compli-
3 ance by 1 percent or more annually during the
4 1-year, 5-year, or 10-year period after imple-
5 mentation;

6 “(B) in one or more sectors of the econ-
7 omy that has a 6-digit code under the North
8 American Industry Classification System, re-
9 duce average weekly wages for employment not
10 related to new regulatory compliance by 1 per-
11 cent or more annually during the 1-year, 5-
12 year, or 10-year period after implementation;

13 “(C) in any industry area (as such term is
14 defined in the Current Population Survey con-
15 ducted by the Bureau of Labor Statistics) in
16 which the most recent annual unemployment
17 rate for the industry area is greater than 5 per-
18 cent, as determined by the Bureau of Labor
19 Statistics in the Current Population Survey, re-
20 duce employment not related to new regulatory
21 compliance during the first year after imple-
22 mentation; or

23 “(D) in any industry area in which the Bu-
24 reau of Labor Statistics projects in the Occupa-
25 tional Employment Statistics program that the

1 employment level will decrease by 1 percent or
2 more, further reduce employment not related to
3 new regulatory compliance during the first year
4 after implementation;

5 “(18) ‘guidance’ means an agency statement of
6 general applicability and future effect, other than a
7 regulatory action, that sets forth a policy on a statu-
8 tory, regulatory or technical issue or an interpreta-
9 tion of a statutory or regulatory issue;

10 “(19) ‘major guidance’ means guidance that the
11 Administrator of the Office of Information and Reg-
12 ulatory Affairs finds is likely to lead to—

13 “(A) an annual cost on the economy of
14 \$100,000,000 or more, adjusted annually for
15 inflation;

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

20 “(C) significant adverse effects on competi-
21 tion, employment, investment, productivity, in-
22 novation, or on the ability of United States-
23 based enterprises to compete with foreign-based
24 enterprises in domestic and export markets; or

1 “(D) significant impacts on multiple sec-
2 tors of the economy;

3 “(20) the ‘Information Quality Act’ means sec-
4 tion 515 of Public Law 106–554, the Treasury and
5 General Government Appropriations Act for Fiscal
6 Year 2001, and guidelines issued by the Adminis-
7 trator of the Office of Information and Regulatory
8 Affairs or other agencies pursuant to the Act; and
9 “(21) the ‘Office of Information and Regulatory
10 Affairs’ means the office established under section
11 3503 of chapter 35 of title 44 and any successor to
12 that office.”.

13 **SEC. 103. RULE MAKING.**

14 (a) Section 553(a) of title 5, United States Code, is
15 amended by striking “(a) This section applies” and insert-
16 ing “(a) APPLICABILITY.—This section applies”.

17 (b) Section 553 of title 5, United States Code, is
18 amended by striking subsections (b) through (e) and in-
19 serting the following:

20 “(b) RULE MAKING CONSIDERATIONS.—In a rule
21 making, an agency shall make all preliminary and final
22 factual determinations based on evidence and consider, in
23 addition to other applicable considerations, the following:

24 “(1) The legal authority under which a rule
25 may be proposed, including whether a rule making

1 is required by statute, and if so, whether by a spe-
2 cific date, or whether the agency has discretion to
3 commence a rule making.

4 “(2) Other statutory considerations applicable
5 to whether the agency can or should propose a rule
6 or undertake other agency action.

7 “(3) The specific nature and significance of the
8 problem the agency may address with a rule (includ-
9 ing the degree and nature of risks the problem poses
10 and the priority of addressing those risks compared
11 to other matters or activities within the agency’s ju-
12 risdiction), whether the problem warrants new agen-
13 cy action, and the countervailing risks that may be
14 posed by alternatives for new agency action.

15 “(4) Whether existing rules have created or
16 contributed to the problem the agency may address
17 with a rule and whether those rules could be amend-
18 ed or rescinded to address the problem in whole or
19 part.

20 “(5) Any reasonable alternatives for a new rule
21 or other response identified by the agency or inter-
22 ested persons, including not only responses that
23 mandate particular conduct or manners of compli-
24 ance, but also—

1 “(A) the alternative of no Federal re-
2 sponse;

3 “(B) amending or rescinding existing
4 rules;

5 “(C) potential regional, State, local, or
6 tribal regulatory action or other responses that
7 could be taken in lieu of agency action; and

8 “(D) potential responses that—

9 “(i) specify performance objectives
10 rather than conduct or manners of compli-
11 ance;

12 “(ii) establish economic incentives to
13 encourage desired behavior;

14 “(iii) provide information upon which
15 choices can be made by the public; or

16 “(iv) incorporate other innovative al-
17 ternatives rather than agency actions that
18 specify conduct or manners of compliance.

19 “(6) Notwithstanding any other provision of
20 law—

21 “(A) the potential costs and benefits asso-
22 ciated with potential alternative rules and other
23 responses considered under section 553(b)(5),
24 including direct, indirect, and cumulative costs
25 and benefits and estimated impacts on jobs (in-

1 including an estimate of the net gain or loss in
2 domestic jobs), wages, economic growth, innova-
3 tion, economic competitiveness, and impacts on
4 low income populations;

5 “(B) means to increase the cost-effective-
6 ness of any Federal response; and

7 “(C) incentives for innovation, consistency,
8 predictability, lower costs of enforcement and
9 compliance (to government entities, regulated
10 entities, and the public), and flexibility.

11 “(c) ADVANCE NOTICE OF PROPOSED RULE MAKING
12 FOR MAJOR RULES, HIGH-IMPACT RULES, NEGATIVE-IM-
13 PACT ON JOBS AND WAGES RULES, AND RULES INVOLV-
14 ING NOVEL LEGAL OR POLICY ISSUES.—In the case of
15 a rule making for a major rule, a high-impact rule, a nega-
16 tive-impact on jobs and wages rule, or a rule that involves
17 a novel legal or policy issue arising out of statutory man-
18 dates, not later than 90 days before a notice of proposed
19 rule making is published in the Federal Register, an agen-
20 cy shall publish advance notice of proposed rule making
21 in the Federal Register. In publishing such advance notice,
22 the agency shall—

23 “(1) include a written statement identifying, at
24 a minimum—

1 “(A) the nature and significance of the
2 problem the agency may address with a rule, in-
3 cluding data and other evidence and informa-
4 tion on which the agency expects to rely for the
5 proposed rule;

6 “(B) the legal authority under which a rule
7 may be proposed, including whether a rule mak-
8 ing is required by statute, and if so, whether by
9 a specific date, or whether the agency has dis-
10 cretion to commence a rule making;

11 “(C) preliminary information available to
12 the agency concerning the other considerations
13 specified in subsection (b);

14 “(D) in the case of a rule that involves a
15 novel legal or policy issue arising out of statu-
16 tory mandates, the nature of and potential rea-
17 sons to adopt the novel legal or policy position
18 upon which the agency may base a proposed
19 rule; and

20 “(E) an achievable objective for the rule
21 and metrics by which the agency will measure
22 progress toward that objective;

23 “(2) solicit written data, views or argument
24 from interested persons concerning the information
25 and issues addressed in the advance notice; and

1 “(3) provide for a period of not fewer than 60
2 days for interested persons to submit such written
3 data, views, or argument to the agency.

4 “(d) NOTICES OF PROPOSED RULE MAKING; DETER-
5 MINATIONS OF OTHER AGENCY COURSE.—(1) Before it
6 determines to propose a rule, and following completion of
7 procedures under subsection (c), if applicable, the agency
8 shall consult with the Administrator of the Office of Infor-
9 mation and Regulatory Affairs. If the agency thereafter
10 determines to propose a rule, the agency shall publish a
11 notice of proposed rule making, which shall include—

12 “(A) a statement of the time, place, and nature
13 of public rule making proceedings;

14 “(B) reference to the legal authority under
15 which the rule is proposed;

16 “(C) the terms of the proposed rule;

17 “(D) a description of information known to the
18 agency on the subject and issues of the proposed
19 rule, including but not limited to—

20 “(i) a summary of information known to
21 the agency concerning the considerations speci-
22 fied in subsection (b);

23 “(ii) a summary of additional information
24 the agency provided to and obtained from inter-
25 ested persons under subsection (c);

1 “(iii) a summary of any preliminary risk
2 assessment or regulatory impact analysis per-
3 formed by the agency; and

4 “(iv) information specifically identifying all
5 data, studies, models, and other evidence or in-
6 formation considered or used by the agency in
7 connection with its determination to propose
8 the rule;

9 “(E)(i) a reasoned preliminary determination of
10 need for the rule based on the information described
11 under subparagraph (D);

12 “(ii) an additional statement of whether a rule
13 is required by statute; and

14 “(iii) an achievable objective for the rule and
15 metrics by which the agency will measure progress
16 toward that objective;

17 “(F) a reasoned preliminary determination that
18 the benefits of the proposed rule meet the relevant
19 statutory objectives and justify the costs of the pro-
20 posed rule (including all costs to be considered under
21 subsection (b)(6)), based on the information de-
22 scribed under subparagraph (D);

23 “(G) a discussion of—

1 “(i) the alternatives to the proposed rule,
2 and other alternative responses, considered by
3 the agency under subsection (b);

4 “(ii) the costs and benefits of those alter-
5 natives (including all costs to be considered
6 under subsection (b)(6));

7 “(iii) whether those alternatives meet rel-
8 evant statutory objectives; and

9 “(iv) why the agency did not propose any
10 of those alternatives; and

11 “(H)(i) a statement of whether existing rules
12 have created or contributed to the problem the agen-
13 cy seeks to address with the proposed rule; and

14 “(ii) if so, whether or not the agency proposes
15 to amend or rescind any such rules, and why.

16 All information provided to or considered by the agency,
17 and steps to obtain information by the agency, in connec-
18 tion with its determination to propose the rule, including
19 any preliminary risk assessment or regulatory impact
20 analysis prepared by the agency and all other information
21 prepared or described by the agency under subparagraph
22 (D) and, at the discretion of the President or the Adminis-
23 trator of the Office of Information and Regulatory Affairs,
24 information provided by that Office in consultations with
25 the agency, shall be placed in the docket for the proposed

1 rule and made accessible to the public by electronic means
2 and otherwise for the public's use when the notice of pro-
3 posed rule making is published.

4 “(2)(A) If the agency undertakes procedures under
5 subsection (c) and determines thereafter not to propose
6 a rule, the agency shall, following consultation with the
7 Office of Information and Regulatory Affairs, publish a
8 notice of determination of other agency course. A notice
9 of determination of other agency course shall include in-
10 formation required by paragraph (1)(D) to be included in
11 a notice of proposed rule making and a description of the
12 alternative response the agency determined to adopt.

13 “(B) If in its determination of other agency course
14 the agency makes a determination to amend or rescind
15 an existing rule, the agency need not undertake additional
16 proceedings under subsection (c) before it publishes a no-
17 tice of proposed rule making to amend or rescind the exist-
18 ing rule.

19 All information provided to or considered by the agency,
20 and steps to obtain information by the agency, in connec-
21 tion with its determination of other agency course, includ-
22 ing but not limited to any preliminary risk assessment or
23 regulatory impact analysis prepared by the agency and all
24 other information that would be required to be prepared
25 or described by the agency under paragraph (1)(D) if the

1 agency had determined to publish a notice of proposed rule
2 making and, at the discretion of the President or the Ad-
3 ministrator of the Office of Information and Regulatory
4 Affairs, information provided by that Office in consulta-
5 tions with the agency, shall be placed in the docket for
6 the determination and made accessible to the public by
7 electronic means and otherwise for the public's use when
8 the notice of determination is published.

9 “(3) After notice of proposed rule making required
10 by this section, the agency shall provide interested persons
11 an opportunity to participate in the rule making through
12 submission of written data, views, or arguments with or
13 without opportunity for oral presentation, except that—

14 “(A) if a hearing is required under paragraph
15 (4)(B) or subsection (e), opportunity for oral presen-
16 tation shall be provided pursuant to that require-
17 ment; or

18 “(B) when other than under subsection (e) of
19 this section rules are required by statute or at the
20 discretion of the agency to be made on the record
21 after opportunity for an agency hearing, sections
22 556 and 557 shall apply, and paragraph (4), the re-
23 quirements of subsection (e) to receive comment out-
24 side of the procedures of sections 556 and 557, and

1 the petition procedures of subsection (e)(6) shall not
2 apply.

3 The agency shall provide not fewer than 60 days for inter-
4 ested persons to submit written data, views, or argument
5 (or 120 days in the case of a proposed major or high-
6 impact rule).

7 “(4)(A) Within 30 days of publication of notice of
8 proposed rule making, a member of the public may peti-
9 tion for a hearing in accordance with section 556 to deter-
10 mine whether any evidence or other information upon
11 which the agency bases the proposed rule fails to comply
12 with the Information Quality Act.

13 “(B)(i) The agency may, upon review of the petition,
14 determine without further process to exclude from the rule
15 making the evidence or other information that is the sub-
16 ject of the petition and, if appropriate, withdraw the pro-
17 posed rule. The agency shall promptly publish any such
18 determination.

19 “(ii) If the agency does not resolve the petition under
20 the procedures of clause (i), it shall grant any such peti-
21 tion that presents a prima facie case that evidence or other
22 information upon which the agency bases the proposed
23 rule fails to comply with the Information Quality Act, hold
24 the requested hearing not later than 30 days after receipt
25 of the petition, provide a reasonable opportunity for cross-

1 examination at the hearing, and decide the issues pre-
2 sented by the petition not later than 60 days after receipt
3 of the petition. The agency may deny any petition that
4 it determines does not present such a prima facie case.

5 “(C) There shall be no judicial review of the agency’s
6 disposition of issues considered and decided or determined
7 under subparagraph (B)(ii) until judicial review of the
8 agency’s final action. There shall be no judicial review of
9 an agency’s determination to withdraw a proposed rule
10 under subparagraph (B)(i) on the basis of the petition.

11 “(D) Failure to petition for a hearing under this
12 paragraph shall not preclude judicial review of any claim
13 based on the Information Quality Act under chapter 7 of
14 this title.

15 “(5) After notice or advance notice of a proposed rule
16 making, the agency making the rule, and any person act-
17 ing in an official capacity on behalf of the agency, may
18 not communicate, and a person who receives Federal
19 funds from the agency may not use those funds to commu-
20 nicate, through written, oral, electronic, or other means
21 to the public about the proposed rule in a manner that—

22 “(A) directly advocates, in support of or against
23 the proposed rule, for the submission of information
24 to form part of the record of review for the proposed
25 rule;

1 “(B) appeals to the public, or solicits a third-
2 party, to undertake advocacy in support of or
3 against the proposed rule; or

4 “(C) is directly or indirectly for publicity or
5 propaganda purposes within the United States not
6 heretofore authorized by the Congress.

7 Such prohibition shall not apply to communication that
8 requests comments or provides information regarding the
9 rule in an impartial manner.

10 “(e) HEARINGS FOR HIGH-IMPACT RULES.—Fol-
11 lowing notice of a proposed rule making, receipt of com-
12 ments on the proposed rule, and any hearing held under
13 subsection (d)(4), and before adoption of any high-impact
14 rule, the agency shall hold a hearing in accordance with
15 sections 556 and 557, unless such hearing is waived by
16 all participants in the rule making other than the agency.
17 The agency shall provide a reasonable opportunity for
18 cross-examination at such hearing. The hearing shall be
19 limited to the following issues of fact, except that partici-
20 pants at the hearing other than the agency may waive de-
21 termination of any such issue:

22 “(1) Whether the agency’s asserted factual
23 predicate for the rule is supported by the evidence.

24 “(2) Whether there is an alternative to the pro-
25 posed rule that would achieve the relevant statutory

1 objectives at a lower cost (including all costs to be
2 considered under subsection (b)(6)) than the pro-
3 posed rule.

4 “(3) If there is more than one alternative to the
5 proposed rule that would achieve the relevant statu-
6 tory objectives at a lower cost than the proposed
7 rule, which alternative would achieve the relevant
8 statutory objectives at the lowest cost.

9 “(4) Whether, if the agency proposes to adopt
10 a rule that is more costly than the least costly alter-
11 native that would achieve the relevant statutory ob-
12 jectives (including all costs to be considered under
13 subsection (b)(6)), the additional benefits of the
14 more costly rule exceed the additional costs of the
15 more costly rule.

16 “(5) Whether the evidence and other informa-
17 tion upon which the agency bases the proposed rule
18 meets the requirements of the Information Quality
19 Act.

20 “(6) Upon petition by an interested person who
21 has participated in the rule making, other issues rel-
22 evant to the rule making, unless the agency deter-
23 mines that consideration of the issues at the hearing
24 would not advance consideration of the rule or
25 would, in light of the nature of the need for agency

1 action, unreasonably delay completion of the rule
2 making. An agency shall grant or deny a petition
3 under this paragraph within 30 days of its receipt
4 of the petition.

5 No later than 45 days before any hearing held under this
6 subsection or sections 556 and 557, the agency shall pub-
7 lish in the Federal Register a notice specifying the pro-
8 posed rule to be considered at such hearing, the issues
9 to be considered at the hearing, and the time and place
10 for such hearing, except that such notice may be issued
11 not later than 15 days before a hearing held under sub-
12 section (d)(4)(B).

13 “(f) FINAL RULES.—(1) The agency shall adopt a
14 rule only following consultation with the Administrator of
15 the Office of Information and Regulatory Affairs to facili-
16 tate compliance with applicable rule making requirements.

17 “(2) The agency shall adopt a rule only on the basis
18 of the best reasonably obtainable scientific, technical, eco-
19 nomic, and other evidence and information concerning the
20 need for, consequences of, and alternatives to the rule.

21 “(3)(A) Except as provided in subparagraph (B), the
22 agency shall adopt the least costly rule considered during
23 the rule making (including all costs to be considered under
24 subsection (b)(6)) that meets relevant statutory objectives.

1 “(B) The agency may adopt a rule that is more costly
2 than the least costly alternative that would achieve the rel-
3 evant statutory objectives only if the additional benefits
4 of the more costly rule justify its additional costs and only
5 if the agency explains its reason for doing so based on
6 interests of public health, safety or welfare that are clearly
7 within the scope of the statutory provision authorizing the
8 rule.

9 “(4) When it adopts a final rule, the agency shall
10 publish a notice of final rule making. The notice shall in-
11 clude—

12 “(A) a concise, general statement of the rule’s
13 basis and purpose;

14 “(B) the agency’s reasoned final determination
15 of need for a rule to address the problem the agency
16 seeks to address with the rule, including a statement
17 of whether a rule is required by statute and a sum-
18 mary of any final risk assessment or regulatory im-
19 pact analysis prepared by the agency;

20 “(C) the agency’s reasoned final determination
21 that the benefits of the rule meet the relevant statu-
22 tory objectives and justify the rule’s costs (including
23 all costs to be considered under subsection (b)(6));

24 “(D) the agency’s reasoned final determination
25 not to adopt any of the alternatives to the proposed

1 rule considered by the agency during the rule mak-
2 ing, including—

3 “(i) the agency’s reasoned final determina-
4 tion that no alternative considered achieved the
5 relevant statutory objectives with lower costs
6 (including all costs to be considered under sub-
7 section (b)(6)) than the rule; or

8 “(ii) the agency’s reasoned determination
9 that its adoption of a more costly rule complies
10 with subsection (f)(3)(B);

11 “(E) the agency’s reasoned final determina-
12 tion—

13 “(i) that existing rules have not created or
14 contributed to the problem the agency seeks to
15 address with the rule; or

16 “(ii) that existing rules have created or
17 contributed to the problem the agency seeks to
18 address with the rule, and, if so—

19 “(I) why amendment or rescission of
20 such existing rules is not alone sufficient
21 to respond to the problem; and

22 “(II) whether and how the agency in-
23 tends to amend or rescind the existing rule
24 separate from adoption of the rule;

1 “(F) the agency’s reasoned final determination
2 that the evidence and other information upon which
3 the agency bases the rule complies with the Informa-
4 tion Quality Act;

5 “(G) the agency’s reasoned final determination
6 that the rule meets the objectives that the agency
7 identified in subsection (d)(1)(E)(iii) or that other
8 objectives are more appropriate in light of the full
9 administrative record and the rule meets those ob-
10 jectives;

11 “(H) the agency’s reasoned final determination
12 that it did not deviate from the metrics the agency
13 included in subsection (d)(1)(E)(iii) or that other
14 metrics are more appropriate in light of the full ad-
15 ministrative record and the agency did not deviate
16 from those metrics;

17 “(I)(i) for any major rule, high-impact rule, or
18 negative-impact on jobs and wages rule, the agency’s
19 plan for review of the rule no less than every ten
20 years to determine whether, based upon evidence,
21 there remains a need for the rule, whether the rule
22 is in fact achieving statutory objectives, whether the
23 rule’s benefits continue to justify its costs, and
24 whether the rule can be modified or rescinded to re-

1 duce costs while continuing to achieve statutory ob-
2 jectives;

3 “(ii) review of a rule under a plan required by
4 clause (i) of this subparagraph shall take into ac-
5 count the factors and criteria set forth in sub-
6 sections (b) through (f) of section 553 of this title;
7 and

8 “(iii) in the case of a major rule, a report on
9 the benefits and costs of the final rule on entities
10 whose conduct is regulated by the rule in the Fed-
11 eral Register, to be revised every 5 years thereafter
12 while the rule remains in effect, and including, at a
13 minimum—

14 “(I) an assessment of the impacts, includ-
15 ing any costs, of the major rule on regulated
16 entities;

17 “(II) a determination about how the actual
18 benefits and costs of the major rule have varied
19 from those anticipated at the time the major
20 rule was issued;

21 “(III) an assessment of the effectiveness
22 and benefits of the major rule in producing the
23 regulatory objectives of the major rule; and

24 “(IV) a review by the Administrator of the
25 Office of Information and Regulatory Affairs of

1 the Office of Management and Budget when re-
2 quired under executive order; and

3 “(J) for any negative-impact on jobs and wages
4 rule, a statement that the head of the agency that
5 made the rule approved the rule knowing about the
6 findings and determination of the agency or the Ad-
7 ministrator of the Office of Information and Regu-
8 latory Affairs that qualified the rule as a negative
9 impact on jobs and wages rule.

10 All information considered by the agency in connection
11 with its adoption of the rule, and, at the discretion of the
12 President or the Administrator of the Office of Informa-
13 tion and Regulatory Affairs, information provided by that
14 Office in consultations with the agency, shall be placed
15 in the docket for the rule and made accessible to the public
16 for the public’s use no later than when the rule is adopted.

17 “(g) EXCEPTIONS FROM NOTICE AND HEARING RE-
18 QUIREMENTS.—(1) Except when notice or hearing is re-
19 quired by statute, the following do not apply to interpre-
20 tive rules, general statements of policy, or rules of agency
21 organization, procedure, or practice:

22 “(A) Subsections (c) through (e).

23 “(B) Paragraphs (1) through (3) of subsection
24 (f).

1 “(C) Subparagraphs (B) through (H) of sub-
2 section (f)(4).

3 “(2)(A) When the agency for good cause, based upon
4 evidence, finds (and incorporates the finding and a brief
5 statement of reasons therefor in the rules issued) that
6 compliance with subsection (c), (d), or (e) or requirements
7 to render final determinations under subsection (f) of this
8 section before the issuance of an interim rule is impracti-
9 cable or contrary to the public interest, including interests
10 of national security, such subsections or requirements to
11 render final determinations shall not apply to the agency’s
12 adoption of an interim rule.

13 “(B) If, following compliance with subparagraph (A)
14 of this paragraph, the agency adopts an interim rule, it
15 shall commence proceedings that comply fully with sub-
16 sections (d) through (f) of this section immediately upon
17 publication of the interim rule, shall treat the publication
18 of the interim rule as publication of a notice of proposed
19 rule making and shall not be required to issue supple-
20 mental notice other than to complete full compliance with
21 subsection (d). No less than 270 days from publication
22 of the interim rule (or 18 months in the case of a major
23 rule or high-impact rule), the agency shall complete rule
24 making under subsections (d) through (f) of this sub-
25 section and take final action to adopt a final rule or re-

1 scind the interim rule. If the agency fails to take timely
2 final action, the interim rule will cease to have the effect
3 of law.

4 “(C) Other than in cases involving interests of na-
5 tional security, upon the agency’s publication of an interim
6 rule without compliance with subsection (c), (d), or (e) or
7 requirements to render final determinations under sub-
8 section (f) of this section, an interested party may seek
9 immediate judicial review under chapter 7 of this title of
10 the agency’s determination to adopt such interim rule. The
11 record on such review shall include all documents and in-
12 formation considered by the agency and any additional in-
13 formation presented by a party that the court determines
14 necessary to consider to assure justice.

15 “(3) When the agency for good cause finds (and in-
16 corporates the finding and a brief statement of reasons
17 therefor in the rules issued) that notice and public proce-
18 dure thereon are unnecessary, including because agency
19 rule making is undertaken only to correct a de minimis
20 technical or clerical error in a previously issued rule or
21 for other noncontroversial purposes, the agency may pub-
22 lish a rule without compliance with subsection (c), (d), (e),
23 or (f)(1)–(3) and (f)(4)(B)–(F). If the agency receives sig-
24 nificant adverse comment within 60 days after publication
25 of the rule, it shall treat the notice of the rule as a notice

1 of proposed rule making and complete rule making in com-
2 pliance with subsections (d) and (f).

3 “(h) ADDITIONAL REQUIREMENTS FOR HEARINGS.—
4 When a hearing is required under subsection (e) or is oth-
5 erwise required by statute or at the agency’s discretion
6 before adoption of a rule, the agency shall comply with
7 the requirements of sections 556 and 557 in addition to
8 the requirements of subsection (f) in adopting the rule and
9 in providing notice of the rule’s adoption.

10 “(i) DATE OF PUBLICATION OF RULE.—The required
11 publication or service of a substantive final or interim rule
12 shall be made not less than 30 days before the effective
13 date of the rule, except—

14 “(1) a substantive rule which grants or recog-
15 nizes an exemption or relieves a restriction;

16 “(2) interpretive rules and statements of policy;
17 or

18 “(3) as otherwise provided by the agency for
19 good cause found and published with the rule.

20 “(j) RIGHT TO PETITION.—Each agency shall give
21 an interested person the right to petition for the issuance,
22 amendment, or repeal of a rule.

23 “(k) RULE MAKING GUIDELINES.—(1)(A) The Ad-
24 ministrator of the Office of Information and Regulatory
25 Affairs shall establish guidelines for the assessment, in-

cluding quantitative and qualitative assessment, of the costs and benefits of proposed and final rules and other economic issues or issues related to risk that are relevant to rule making under this title. The rigor of cost-benefit analysis required by such guidelines shall be commensurate, in the Administrator's determination, with the economic impact of the rule.

“(B) To ensure that agencies use the best available techniques to quantify and evaluate anticipated present and future benefits, costs, other economic issues, and risks as accurately as possible, the Administrator of the Office of Information and Regulatory Affairs shall regularly update guidelines established under paragraph (1)(A) of this subsection.

“(2) The Administrator of the Office of Information and Regulatory Affairs shall also issue guidelines to promote coordination, simplification and harmonization of agency rules during the rule making process and otherwise. Such guidelines shall assure that each agency avoids regulations that are inconsistent or incompatible with, or duplicative of, its other regulations and those of other Federal agencies and drafts its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

1 “(3) To ensure consistency in Federal rule making,
2 the Administrator of the Office of Information and Regu-
3 latory Affairs shall—

4 “(A) issue guidelines and otherwise take action
5 to ensure that rule makings conducted in whole or
6 in part under procedures specified in provisions of
7 law other than those of subchapter II of this title
8 conform to the fullest extent allowed by law with the
9 procedures set forth in section 553 of this title; and

10 “(B) issue guidelines for the conduct of hear-
11 ings under subsections 553(d)(4) and 553(e) of this
12 section, including to assure a reasonable opportunity
13 for cross-examination. Each agency shall adopt regu-
14 lations for the conduct of hearings consistent with
15 the guidelines issued under this subparagraph.

16 “(4) The Administrator of the Office of Information
17 and Regulatory Affairs shall issue guidelines pursuant to
18 the Information Quality Act to apply in rule making pro-
19 ceedings under sections 553, 556, and 557 of this title.
20 In all cases, such guidelines, and the Administrator’s spe-
21 cific determinations regarding agency compliance with
22 such guidelines, shall be entitled to judicial deference.

23 “(l) INCLUSION IN THE RECORD OF CERTAIN DOCU-
24 MENTS AND INFORMATION.—The agency shall include in
25 the record for a rule making, and shall make available by

1 electronic means and otherwise, all documents and infor-
 2 mation prepared or considered by the agency during the
 3 proceeding, including, at the discretion of the President
 4 or the Administrator of the Office of Information and Reg-
 5 ulatory Affairs, documents and information communicated
 6 by that Office during consultation with the Agency.

7 “(m) MONETARY POLICY EXEMPTION.—Nothing in
 8 subsection (b)(6), subparagraphs (F) and (G) of sub-
 9 section (d)(1), subsection (e), subsection (f)(3), and sub-
 10 paragraphs (C) and (D) of subsection (f)(5) shall apply
 11 to rule makings that concern monetary policy proposed or
 12 implemented by the Board of Governors of the Federal
 13 Reserve System or the Federal Open Market Committee.

14 “(n) REGULATION-SPECIFIC FRAMEWORKS.—

15 “(1) REPORT TO CONGRESS.—The agency shall
 16 provide a report to Congress not later than 90 days
 17 after the agency makes any determination under
 18 subsection (f)(4)(I)(iii)(II) that the cost to regulated
 19 entities has exceeded the anticipated cost at the time
 20 the final rule was issued. The agency, at a min-
 21 imum, shall assess in the report—

22 “(A) whether the major rule is accom-
 23 plishing its regulatory objective; and

24 “(B) whether the major rule has been ren-
 25 dered unnecessary, taking into consideration—

1 “(i) changes in the subject area af-
2 fected by the major rule;

3 “(ii) whether the major rule overlaps,
4 duplicates, or conflicts with other rules or,
5 to the extent feasible, State and local gov-
6 ernment regulations; and

7 “(iii) other alternatives to the major
8 rule or modification of the major rule that
9 might achieve better results while imposing
10 a smaller burden on society or at a lower
11 cost, taking into consideration any cost al-
12 ready incurred.

13 “(2) REOPENING OF PUBLIC DOCKET.—Upon
14 delivery of the report required in paragraph (1) the
15 agency shall—

16 “(A) reopen the public docket for 60 days
17 to receive additional comments; and

18 “(B) consider modifications or alternatives
19 that reduce costs and increase benefits to regu-
20 lated entities or individuals.

21 “(3) RULE OF CONSTRUCTION.—Nothing in
22 this subsection may be construed to affect any other
23 provision of law that requires an agency to conduct
24 retrospective reviews of rules issued by the agency.”.

1 **SEC. 104. AGENCY GUIDANCE; PROCEDURES TO ISSUE**
2 **MAJOR GUIDANCE; PRESIDENTIAL AUTHOR-**
3 **ITY TO ISSUE GUIDELINES FOR ISSUANCE OF**
4 **GUIDANCE.**

5 (a) IN GENERAL.—Chapter 5 of title 5, United
6 States Code, is amended by inserting after section 553 the
7 following new section:

8 **“§ 553a. Agency guidance; procedures to issue major**
9 **guidance; authority to issue guidelines**
10 **for issuance of guidance**

11 “(a) Before issuing any major guidance, or guidance
12 that involves a novel legal or policy issue arising out of
13 statutory mandates, an agency shall—

14 “(1) make and document a reasoned determina-
15 tion that—

16 “(A) assures that such guidance is under-
17 standable and complies with relevant statutory
18 objectives and regulatory provisions (including
19 any statutory deadlines for agency action);

20 “(B) summarizes the evidence and data on
21 which the agency will base the guidance;

22 “(C) identifies the costs and benefits (in-
23 cluding all costs to be considered during a rule
24 making under section 553(b) of this title) of
25 conduct conforming to such guidance and

1 assures that such benefits justify such costs;
2 and

3 “(D) describes alternatives to such guid-
4 ance and their costs and benefits (including all
5 costs to be considered during a rule making
6 under section 553(b) of this title) and explains
7 why the agency rejected those alternatives; and

8 “(2) confer with the Administrator of the Office
9 of Information and Regulatory Affairs on the
10 issuance of such guidance to assure that the guid-
11 ance is reasonable, understandable, consistent with
12 relevant statutory and regulatory provisions and re-
13 quirements or practices of other agencies, does not
14 produce costs that are unjustified by the guidance’s
15 benefits, and is otherwise appropriate.

16 Upon issuing major guidance, or guidance that involves
17 a novel legal or policy issue arising out of statutory man-
18 dates, the agency shall publish the documentation required
19 by subparagraph (1) by electronic means and otherwise.

20 “(b) Agency guidance—

21 “(1) is not legally binding and may not be re-
22 lied upon by an agency as legal grounds for agency
23 action;

24 “(2) shall state in a plain, prominent and per-
25 manent manner that it is not legally binding; and

1 “(3) shall, at the time it is issued or upon re-
2 quest, be made available by the issuing agency to in-
3 terested persons and the public by electronic means
4 and otherwise.

5 Agencies shall avoid the issuance of guidance that is in-
6 consistent or incompatible with, or duplicative of, the
7 agency’s governing statutes or regulations, with the goal
8 of minimizing the potential for uncertainty and litigation
9 arising from such uncertainty.

10 “(c) The Administrator of the Office of Information
11 and Regulatory Affairs shall have authority to issue guide-
12 lines for use by the agencies in the issuance of major guid-
13 ance and other guidance. Such guidelines shall assure that
14 each agency avoids issuing guidance documents that are
15 inconsistent or incompatible with, or duplicative of, the
16 law, its other regulations, or the regulations of other Fed-
17 eral agencies, drafts its guidance documents to be simple
18 and easy to understand, and issues guidance in a manner
19 sufficient to provide at least 90 days for affected entities
20 to take steps to comply with such guidance, with the goal
21 of minimizing the potential for uncertainty and litigation
22 arising from such uncertainty.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 5 of title 5, United States Code, is amended

1 by inserting after the item relating to section 553 the fol-
 2 lowing new item:

“553a. Agency guidance; procedures to issue major guidance; authority to issue
 guidelines for issuance of guidance.”.

3 **SEC. 105. HEARINGS; PRESIDING EMPLOYEES; POWERS AND**
 4 **DUTIES; BURDEN OF PROOF; EVIDENCE;**
 5 **RECORD AS BASIS OF DECISION.**

6 Section 556 of title 5, United States Code, is amend-
 7 ed by striking subsection (e) and inserting the following:

8 “(e)(1) The transcript of testimony and exhibits, to-
 9 gether with all papers and requests filed in the proceeding,
 10 constitutes the exclusive record for decision in accordance
 11 with section 557 and shall be made available to the parties
 12 and the public by electronic means and, upon payment of
 13 lawfully prescribed costs, otherwise. When an agency deci-
 14 sion rests on official notice of a material fact not appear-
 15 ing in the evidence in the record, a party is entitled, on
 16 timely request, to an opportunity to show the contrary.

17 “(2) Notwithstanding paragraph (1) of this sub-
 18 section, in a proceeding held under this section pursuant
 19 to section 553(d)(4) or 553(e), the record for decision
 20 shall also include any information that is part of the
 21 record of proceedings under section 553.

22 “(f) When an agency conducts rule making under this
 23 section and section 557 directly after concluding pro-
 24 ceedings upon an advance notice of proposed rule making

1 under section 553(c), the matters to be considered and
2 determinations to be made shall include, among other rel-
3 evant matters and determinations, the matters and deter-
4 minations described in subsections (b) and (f) of section
5 553.

6 “(g) Upon receipt of a petition for a hearing under
7 this section, the agency shall grant the petition in the case
8 of any major rule, unless the agency reasonably deter-
9 mines that a hearing would not advance consideration of
10 the rule or would, in light of the need for agency action,
11 unreasonably delay completion of the rule making. The
12 agency shall publish its decision to grant or deny the peti-
13 tion when it renders the decision, including an explanation
14 of the grounds for decision. The information contained in
15 the petition shall in all cases be included in the adminis-
16 trative record. This subsection shall not apply to rule mak-
17 ings that concern monetary policy proposed or imple-
18 mented by the Board of Governors of the Federal Reserve
19 System or the Federal Open Market Committee.”.

20 **SEC. 106. ACTIONS REVIEWABLE.**

21 Section 704 of title 5, United States Code, is amend-
22 ed—

23 (1) by striking “Agency action made” and in-
24 serting “(a) Agency action made”; and

1 (2) by adding at the end the following: “Denial
2 by an agency of a correction request or, where ad-
3 ministrative appeal is provided for, denial of an ap-
4 peal, under an administrative mechanism described
5 in subsection (b)(2)(B) of the Information Quality
6 Act, or the failure of an agency within 90 days to
7 grant or deny such request or appeal, shall be final
8 action for purposes of this section.

9 “(b) Other than in cases involving interests of na-
10 tional security, notwithstanding subsection (a) of this sec-
11 tion, upon the agency’s publication of an interim rule with-
12 out compliance with section 553(c), (d), or (e) or require-
13 ments to render final determinations under subsection (f)
14 of section 553, an interested party may seek immediate
15 judicial review under this chapter of the agency’s deter-
16 mination to adopt such rule on an interim basis. Review
17 shall be limited to whether the agency abused its discre-
18 tion to adopt the interim rule without compliance with sec-
19 tion 553(c), (d), or (e) or without rendering final deter-
20 minations under subsection (f) of section 553.”.

21 **SEC. 107. SCOPE OF REVIEW.**

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

24 (1) by striking “To the extent necessary” and
25 inserting “(a) To the extent necessary”;

1 (2) in paragraph (2)(A) of subsection (b) (as
2 designated by section 202 of this Act), by inserting
3 after “in accordance with law” the following: “(in-
4 cluding the Information Quality Act)”; and

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

6 “(c) The court shall not defer to the agency’s—

7 “(1) determination of the costs and benefits or
8 other economic or risk assessment of the action, if
9 the agency failed to conform to guidelines on such
10 determinations and assessments established by the
11 Administrator of the Office of Information and Reg-
12 ulatory Affairs under section 553(k);

13 “(2) determinations made in the adoption of an
14 interim rule; or

15 “(3) guidance.

16 “(d) The court shall review agency denials of peti-
17 tions under section 553(e)(6) or any other petition for a
18 hearing under sections 556 and 557 for abuse of agency
19 discretion.”.

20 **SEC. 108. ADDED DEFINITION.**

21 Section 701(b) of title 5, United States Code, is
22 amended—

23 (1) in paragraph (1), by striking “and” at the
24 end;

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

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

4 “(3) ‘substantial evidence’ means such relevant
5 evidence as a reasonable mind might accept as ade-
6 quate to support a conclusion in light of the record
7 considered as a whole, taking into account whatever
8 in the record fairly detracts from the weight of the
9 evidence relied upon by the agency to support its de-
10 cision.”.

11 **SEC. 109. EFFECTIVE DATE.**

12 The amendments made by this title to—

13 (1) sections 553, 556, and 704 of title 5,
14 United States Code;

15 (2) subsection (b) of section 701 of such title;

16 (3) paragraphs (1) and (2) of section 706(c) of
17 such title; and

18 (4) subsection (d) of section 706 of such title,
19 shall not apply to any rule makings pending or completed
20 on the date of enactment of this title.

21 **SEC. 110. PROMPT ISSUANCE OF OIRA GUIDELINES.**

22 The Administrator of the Office of Information and
23 Regulatory Affairs of the Office of Management and
24 Budget shall establish any guideline required to be estab-
25 lished by this title or the amendments made by this title

1 by not later than 270 days after the date of enactment
 2 of this title.

3 **TITLE II—SEPARATION OF** 4 **POWERS RESTORATION ACT**

5 **SEC. 201. SHORT TITLE.**

6 This title may be cited as the “Separation of Powers
 7 Restoration Act”.

8 **SEC. 202. JUDICIAL REVIEW OF STATUTORY AND REGU-** 9 **LATORY INTERPRETATIONS.**

10 Section 706 of title 5, United States Code, as amend-
 11 ed by this Act, is further amended—

12 (1) in subsection (a) (as designated by section
 13 107 of this Act)—

14 (A) by striking “decide all relevant ques-
 15 tions of law, interpret constitutional and statu-
 16 tory provisions, and”; and

17 (B) by inserting after “of the terms of an
 18 agency action” the following “and decide de
 19 novo all relevant questions of law, including the
 20 interpretation of constitutional and statutory
 21 provisions, and rules made by agencies. If the
 22 reviewing court determines that a statutory or
 23 regulatory provision relevant to its decision con-
 24 tains a gap or ambiguity, the court shall not in-
 25 terpret that gap or ambiguity as an implicit del-

1 egation to the agency of legislative rule making
 2 authority and shall not rely on such gap or am-
 3 biguity as a justification either for interpreting
 4 agency authority expansively or for deferring to
 5 the agency’s interpretation on the question of
 6 law. Notwithstanding any other provision of
 7 law, this subsection shall apply in any action
 8 for judicial review of agency action authorized
 9 under any provision of law. No law may exempt
 10 any such civil action from the application of
 11 this section except by specific reference to this
 12 section”; and

13 (2) by striking “The reviewing court shall—”
 14 and inserting the following:

15 “(b) The reviewing court shall—”.

16 **TITLE III—SMALL BUSINESS**
 17 **REGULATORY FLEXIBILITY**
 18 **IMPROVEMENTS ACT**

19 **SEC. 301. SHORT TITLE.**

20 This title may be cited as the “Small Business Regu-
 21 latory Flexibility Improvements Act”.

1 **SEC. 302. CLARIFICATION AND EXPANSION OF RULES COV-**
2 **ERED BY THE REGULATORY FLEXIBILITY**
3 **ACT.**

4 (a) IN GENERAL.—Paragraph (2) of section 601 of
5 title 5, United States Code, is amended to read as follows:

6 “(2) RULE.—The term ‘rule’ has the meaning
7 given such term in section 551(4) of this title, ex-
8 cept that such term does not include—

9 “(A) a rule pertaining to the protection of
10 the rights of and benefits for veterans or part
11 232 of title 32 of the Code of Federal Regula-
12 tions (as in effect on July 1, 2014) or any suc-
13 cessor provisions thereto; or

14 “(B) a rule of particular (and not general)
15 applicability relating to rates, wages, corporate
16 or financial structures or reorganizations there-
17 of, prices, facilities, appliances, services, or al-
18 lowances therefor or to valuations, costs or ac-
19 counting, or practices relating to such rates,
20 wages, structures, prices, appliances, services,
21 or allowances.”.

22 (b) INCLUSION OF RULES WITH INDIRECT EF-
23 FECTS.—Section 601 of title 5, United States Code, is
24 amended by adding at the end the following new para-
25 graph:

1 “(9) ECONOMIC IMPACT.—The term ‘economic
2 impact’ means, with respect to a proposed or final
3 rule—

4 “(A) any direct economic effect on small
5 entities of such rule; and

6 “(B) any indirect economic effect (includ-
7 ing compliance costs and effects on revenue) on
8 small entities which is reasonably foreseeable
9 and results from such rule (without regard to
10 whether small entities will be directly regulated
11 by the rule).”.

12 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
13 FECTS.—

14 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
15 YSIS.—Subsection (c) of section 603 of title 5,
16 United States Code, is amended by striking the first
17 sentence and inserting “Each initial regulatory flexi-
18 bility analysis shall also contain a detailed descrip-
19 tion of alternatives to the proposed rule which mini-
20 mize any adverse significant economic impact or
21 maximize any beneficial significant economic impact
22 on small entities.”.

23 (2) FINAL REGULATORY FLEXIBILITY ANAL-
24 YSIS.—The first paragraph (6) of section 604(a) of
25 title 5, United States Code, is amended by striking

1 “minimize the significant economic impact” and in-
2 serting “minimize the adverse significant economic
3 impact or maximize the beneficial significant eco-
4 nomic impact”.

5 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
6 NIZATIONS.—Paragraph (5) of section 601 of title 5,
7 United States Code, is amended by inserting “and tribal
8 organizations (as defined in section 4(l) of the Indian Self-
9 Determination and Education Assistance Act (25 U.S.C.
10 450b(l))),” after “special districts,”.

11 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
12 FORMAL RULEMAKING.—

13 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
14 YSIS.—Subsection (a) of section 603 of title 5,
15 United States Code, is amended in the first sen-
16 tence—

17 (A) by striking “or” after “proposed
18 rule,”; and

19 (B) by inserting “or publishes a revision or
20 amendment to a land management plan,” after
21 “United States,”.

22 (2) FINAL REGULATORY FLEXIBILITY ANAL-
23 YSIS.—Subsection (a) of section 604 of title 5,
24 United States Code, is amended in the first sen-
25 tence—

1 (A) by striking “or” after “proposed rule-
2 making,”; and

3 (B) by inserting “or adopts a revision or
4 amendment to a land management plan,” after
5 “section 603(a),”.

6 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
7 tion 601 of title 5, United States Code, is amended
8 by adding at the end the following new paragraph:

9 “(10) LAND MANAGEMENT PLAN.—

10 “(A) IN GENERAL.—The term ‘land man-
11 agement plan’ means—

12 “(i) any plan developed by the Sec-
13 retary of Agriculture under section 6 of
14 the Forest and Rangeland Renewable Re-
15 sources Planning Act of 1974 (16 U.S.C.
16 1604); and

17 “(ii) any plan developed by the Sec-
18 retary of the Interior under section 202 of
19 the Federal Land Policy and Management
20 Act of 1976 (43 U.S.C. 1712).

21 “(B) REVISION.—The term ‘revision’
22 means any change to a land management plan
23 which—

24 “(i) in the case of a plan described in
25 subparagraph (A)(i), is made under section

1 6(f)(5) of the Forest and Rangeland Re-
2 newable Resources Planning Act of 1974
3 (16 U.S.C. 1604(f)(5)); or

4 “(ii) in the case of a plan described in
5 subparagraph (A)(ii), is made under sec-
6 tion 1610.5–6 of title 43, Code of Federal
7 Regulations (or any successor regulation).

8 “(C) AMENDMENT.—The term ‘amend-
9 ment’ means any change to a land management
10 plan which—

11 “(i) in the case of a plan described in
12 subparagraph (A)(i), is made under section
13 6(f)(4) of the Forest and Rangeland Re-
14 newable Resources Planning Act of 1974
15 (16 U.S.C. 1604(f)(4)) and with respect to
16 which the Secretary of Agriculture pre-
17 pares a statement described in section
18 102(2)(C) of the National Environmental
19 Policy Act of 1969 (42 U.S.C.
20 4332(2)(C)); or

21 “(ii) in the case of a plan described in
22 subparagraph (A)(ii), is made under sec-
23 tion 1610.5–5 of title 43, Code of Federal
24 Regulations (or any successor regulation)
25 and with respect to which the Secretary of

1 the Interior prepares a statement described
2 in section 102(2)(C) of the National Envi-
3 ronmental Policy Act of 1969 (42 U.S.C.
4 4332(2)(C)).”.

5 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
6 INVOLVING THE INTERNAL REVENUE LAWS.—

7 (1) IN GENERAL.—Subsection (a) of section
8 603 of title 5, United States Code, is amended by
9 striking the period at the end and inserting “or a
10 recordkeeping requirement, and without regard to
11 whether such requirement is imposed by statute or
12 regulation.”.

13 (2) COLLECTION OF INFORMATION.—Paragraph
14 (7) of section 601 of title 5, United States Code, is
15 amended to read as follows:

16 “(7) COLLECTION OF INFORMATION.—The term
17 ‘collection of information’ has the meaning given
18 such term in section 3502(3) of title 44.”.

19 (3) RECORDKEEPING REQUIREMENT.—Para-
20 graph (8) of section 601 of title 5, United States
21 Code, is amended to read as follows:

22 “(8) RECORDKEEPING REQUIREMENT.—The
23 term ‘recordkeeping requirement’ has the meaning
24 given such term in section 3502(13) of title 44.”.

1 (g) DEFINITION OF SMALL ORGANIZATION.—Para-
2 graph (4) of section 601 of title 5, United States Code,
3 is amended to read as follows:

4 “(4) SMALL ORGANIZATION.—

5 “(A) IN GENERAL.—The term ‘small orga-
6 nization’ means any not-for-profit enterprise
7 which, as of the issuance of the notice of pro-
8 posed rulemaking—

9 “(i) in the case of an enterprise which
10 is described by a classification code of the
11 North American Industrial Classification
12 System, does not exceed the size standard
13 established by the Administrator of the
14 Small Business Administration pursuant to
15 section 3 of the Small Business Act (15
16 U.S.C. 632) for small business concerns
17 described by such classification code; and

18 “(ii) in the case of any other enter-
19 prise, has a net worth that does not exceed
20 \$7 million and has not more than 500 em-
21 ployees.

22 “(B) LOCAL LABOR ORGANIZATIONS.—In
23 the case of any local labor organization, sub-
24 paragraph (A) shall be applied without regard

to any national or international organization of which such local labor organization is a part.

“(C) AGENCY DEFINITIONS.—Subparagraphs (A) and (B) shall not apply to the extent that an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions for such term which are appropriate to the activities of the agency and publishes such definitions in the Federal Register.”.

SEC. 303. EXPANSION OF REPORT OF REGULATORY AGENCY.

Section 602 of title 5, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking “, and” at the end and inserting “;”;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

“(3) a brief description of the sector of the North American Industrial Classification System that is primarily affected by any rule which the

1 agency expects to propose or promulgate which is
2 likely to have a significant economic impact on a
3 substantial number of small entities; and”;

4 (2) in subsection (c), to read as follows:

5 “(c) Each agency shall prominently display a plain
6 language summary of the information contained in the
7 regulatory flexibility agenda published under subsection
8 (a) on its website within 3 days of its publication in the
9 Federal Register. The Office of Advocacy of the Small
10 Business Administration shall compile and prominently
11 display a plain language summary of the regulatory agen-
12 das referenced in subsection (a) for each agency on its
13 website within 3 days of their publication in the Federal
14 Register.”.

15 **SEC. 304. REQUIREMENTS PROVIDING FOR MORE DE-**
16 **TAILED ANALYSES.**

17 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
18 Subsection (b) of section 603 of title 5, United States
19 Code, is amended to read as follows:

20 “(b) Each initial regulatory flexibility analysis re-
21 quired under this section shall contain a detailed state-
22 ment—

23 “(1) describing the reasons why action by the
24 agency is being considered;

1 “(2) describing the objectives of, and legal basis
2 for, the proposed rule;

3 “(3) estimating the number and type of small
4 entities to which the proposed rule will apply;

5 “(4) describing the projected reporting, record-
6 keeping, and other compliance requirements of the
7 proposed rule, including an estimate of the classes of
8 small entities which will be subject to the require-
9 ment and the type of professional skills necessary
10 for preparation of the report and record;

11 “(5) describing all relevant Federal rules which
12 may duplicate, overlap, or conflict with the proposed
13 rule, or the reasons why such a description could not
14 be provided;

15 “(6) estimating the additional cumulative eco-
16 nomic impact of the proposed rule on small entities
17 beyond that already imposed on the class of small
18 entities by the agency or why such an estimate is
19 not available;

20 “(7) describing any disproportionate economic
21 impact on small entities or a specific class of small
22 entities; and

23 “(8) describing any impairment of the ability of
24 small entities to have access to credit.”.

25 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

1 (1) IN GENERAL.—Section 604(a) of title 5,
2 United States Code, is amended—

3 (A) in paragraph (4), by striking “an ex-
4 planation” and inserting “a detailed expla-
5 nation”;

6 (B) in each of paragraphs (4), (5), and the
7 first paragraph (6), by inserting “detailed” be-
8 fore “description”;

9 (C) in the first paragraph (6), by striking
10 “; and” at the end;

11 (D) in the second paragraph (6), by strik-
12 ing the period and inserting “; and”;

13 (E) by redesignating the second paragraph
14 (6) as paragraph (7); and

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

16 “(8) a detailed description of any dispropor-
17 tionate economic impact on small entities or a spe-
18 cific class of small entities.”.

19 (2) INCLUSION OF RESPONSE TO COMMENTS ON
20 CERTIFICATION OF PROPOSED RULE.—Paragraph
21 (2) of section 604(a) of title 5, United States Code,
22 is amended by inserting “(or certification of the pro-
23 posed rule under section 605(b))” after “initial reg-
24 ulatory flexibility analysis”.

1 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—

2 Subsection (b) of section 604 of title 5, United
3 States Code, is amended to read as follows:

4 “(b) The agency shall make copies of the final regu-
5 latory flexibility analysis available to the public, including
6 placement of the entire analysis on the agency’s website,
7 and shall publish in the Federal Register the final regu-
8 latory flexibility analysis, or a summary thereof which in-
9 cludes the telephone number, mailing address, and link to
10 the website where the complete analysis may be ob-
11 tained.”.

12 (c) CROSS-REFERENCES TO OTHER ANALYSES.—

13 Subsection (a) of section 605 of title 5, United States
14 Code, is amended to read as follows:

15 “(a) A Federal agency shall be treated as satisfying
16 any requirement regarding the content of an agenda or
17 regulatory flexibility analysis under section 602, 603, or
18 604, if such agency provides in such agenda or analysis
19 a cross-reference to the specific portion of another agenda
20 or analysis which is required by any other law and which
21 satisfies such requirement.”.

22 (d) CERTIFICATIONS.—Subsection (b) of section 605
23 of title 5, United States Code, is amended—

24 (1) by inserting “detailed” before “statement”
25 the first place it appears;

1 (2) by inserting “and legal” after “factual”;
2 and

3 (3) by inserting “The detailed statement shall
4 include an economic assessment or a summary there-
5 of that is sufficiently detailed to support the agen-
6 cy’s certification.” before “The agency shall provide
7 such certification”.

8 (e) QUANTIFICATION REQUIREMENTS.—Section 607
9 of title 5, United States Code, is amended to read as fol-
10 lows:

11 **“§ 607. Quantification requirements**

12 “In complying with sections 603 and 604, an agency
13 shall provide—

14 “(1) a quantifiable or numerical description of
15 the effects of the proposed or final rule and alter-
16 natives to the proposed or final rule; or

17 “(2) a more general descriptive statement and
18 a detailed statement explaining why quantification is
19 not practicable or reliable.”.

20 **SEC. 305. REPEAL OF WAIVER AND DELAY AUTHORITY; AD-**
21 **DITIONAL POWERS OF THE CHIEF COUNSEL**
22 **FOR ADVOCACY.**

23 (a) IN GENERAL.—Section 608 of title 5, United
24 States Code, is amended to read as follows:

1 **“§ 608. Additional powers of Chief Counsel for Advoca-**
2 **cacy**

3 “(a)(1) Not later than 270 days after the date of the
4 enactment of this section, the Chief Counsel for Advocacy
5 of the Small Business Administration shall, after oppor-
6 tunity for notice and comment under section 553, issue
7 rules governing agency compliance with this chapter. The
8 Chief Counsel may modify or amend such rules after no-
9 tice and comment under section 553. This chapter (other
10 than this subsection) shall not apply with respect to the
11 issuance, modification, and amendment of rules under this
12 paragraph.

13 “(2) An agency shall not issue rules which supple-
14 ment the rules issued under subsection (a) unless such
15 agency has first consulted with the Chief Counsel for Ad-
16 vocacy to ensure that such supplemental rules comply with
17 this chapter and the rules issued under paragraph (1).

18 “(b) Notwithstanding any other law, the Chief Coun-
19 sel for Advocacy of the Small Business Administration
20 may intervene in any agency adjudication (unless such
21 agency is authorized to impose a fine or penalty under
22 such adjudication), and may inform the agency of the im-
23 pact that any decision on the record may have on small
24 entities. The Chief Counsel shall not initiate an appeal
25 with respect to any adjudication in which the Chief Coun-
26 sel intervenes under this subsection.

1 “(c) The Chief Counsel for Advocacy may file com-
 2 ments in response to any agency notice requesting com-
 3 ment, regardless of whether the agency is required to file
 4 a general notice of proposed rulemaking under section
 5 553.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Section 611(a)(1) of such title is amended
 8 by striking “608(b),”.

9 (2) Section 611(a)(2) of such title is amended
 10 by striking “608(b),”.

11 (3) Section 611(a)(3) of such title is amend-
 12 ed—

13 (A) by striking subparagraph (B); and

14 (B) by striking “(3)(A) A small entity”

15 and inserting the following:

16 “(3) A small entity”.

17 **SEC. 306. PROCEDURES FOR GATHERING COMMENTS.**

18 Section 609 of title 5, United States Code, is amend-
 19 ed by striking subsection (b) and all that follows through
 20 the end of the section and inserting the following:

21 “(b)(1) Prior to publication of any proposed rule de-
 22 scribed in subsection (e), an agency making such rule shall
 23 notify the Chief Counsel for Advocacy of the Small Busi-
 24 ness Administration and provide the Chief Counsel with—

1 “(A) all materials prepared or utilized by the
2 agency in making the proposed rule, including the
3 draft of the proposed rule; and

4 “(B) information on the potential adverse and
5 beneficial economic impacts of the proposed rule on
6 small entities and the type of small entities that
7 might be affected.

8 “(2) An agency shall not be required under para-
9 graph (1) to provide the exact language of any draft if
10 the rule—

11 “(A) relates to the internal revenue laws of the
12 United States; or

13 “(B) is proposed by an independent regulatory
14 agency (as defined in section 3502(5) of title 44).

15 “(c) Not later than 15 days after the receipt of such
16 materials and information under subsection (b), the Chief
17 Counsel for Advocacy of the Small Business Administra-
18 tion shall—

19 “(1) identify small entities or representatives of
20 small entities or a combination of both for the pur-
21 pose of obtaining advice, input, and recommenda-
22 tions from those persons about the potential eco-
23 nomic impacts of the proposed rule and the compli-
24 ance of the agency with section 603; and

1 “(2) convene a review panel consisting of an
2 employee from the Office of Advocacy of the Small
3 Business Administration, an employee from the
4 agency making the rule, and in the case of an agen-
5 cy other than an independent regulatory agency (as
6 defined in section 3502(5) of title 44), an employee
7 from the Office of Information and Regulatory Af-
8 fairs of the Office of Management and Budget to re-
9 view the materials and information provided to the
10 Chief Counsel under subsection (b).

11 “(d)(1) Not later than 60 days after the review panel
12 described in subsection (c)(2) is convened, the Chief Coun-
13 sel for Advocacy of the Small Business Administration
14 shall, after consultation with the members of such panel,
15 submit a report to the agency and, in the case of an agen-
16 cy other than an independent regulatory agency (as de-
17 fined in section 3502(5) of title 44), the Office of Informa-
18 tion and Regulatory Affairs of the Office of Management
19 and Budget.

20 “(2) Such report shall include an assessment of the
21 economic impact of the proposed rule on small entities,
22 including an assessment of the proposed rule’s impact on
23 the cost that small entities pay for energy, an assessment
24 of the proposed rule’s impact on startup costs for small
25 entities, and a discussion of any alternatives that will min-

1 imize adverse significant economic impacts or maximize
2 beneficial significant economic impacts on small entities.

3 “(3) Such report shall become part of the rulemaking
4 record. In the publication of the proposed rule, the agency
5 shall explain what actions, if any, the agency took in re-
6 sponse to such report.

7 “(e) A proposed rule is described by this subsection
8 if the Administrator of the Office of Information and Reg-
9 ulatory Affairs of the Office of Management and Budget,
10 the head of the agency (or the delegatee of the head of
11 the agency), or an independent regulatory agency deter-
12 mines that the proposed rule is likely to result in—

13 “(1) an annual effect on the economy of \$100
14 million or more;

15 “(2) a major increase in costs or prices for con-
16 sumers, individual industries, Federal, State, or local
17 governments, tribal organizations, or geographic re-
18 gions;

19 “(3) significant adverse effects on competition,
20 employment, investment, productivity, innovation, or
21 on the ability of United States-based enterprises to
22 compete with foreign-based enterprises in domestic
23 and export markets; or

24 “(4) a significant economic impact on a sub-
25 stantial number of small entities.

1 “(f) Upon application by the agency, the Chief Coun-
2 sel for Advocacy of the Small Business Administration
3 may waive the requirements of subsections (b) through (e)
4 if the Chief Counsel determines that compliance with the
5 requirements of such subsections are impracticable, un-
6 necessary, or contrary to the public interest.

7 “(g) A small entity or a representative of a small enti-
8 ty may submit a request that the agency provide a copy
9 of the report prepared under subsection (d) and all mate-
10 rials and information provided to the Chief Counsel for
11 Advocacy of the Small Business Administration under
12 subsection (b). The agency receiving such request shall
13 provide the report, materials and information to the re-
14 questing small entity or representative of a small entity
15 not later than 10 business days after receiving such re-
16 quest, except that the agency shall not disclose any infor-
17 mation that is prohibited from disclosure to the public
18 pursuant to section 552(b) of this title.”.

19 **SEC. 307. PERIODIC REVIEW OF RULES.**

20 Section 610 of title 5, United States Code, is amend-
21 ed to read as follows:

22 **“§ 610. Periodic review of rules**

23 “(a) Not later than 180 days after the enactment of
24 this section, each agency shall publish in the Federal Reg-
25 ister and place on its website a plan for the periodic review

1 of rules issued by the agency which the head of the agency
2 determines have a significant economic impact on a sub-
3 stantial number of small entities. Such determination shall
4 be made without regard to whether the agency performed
5 an analysis under section 604. The purpose of the review
6 shall be to determine whether such rules should be contin-
7 ued without change, or should be amended or rescinded,
8 consistent with the stated objectives of applicable statutes,
9 to minimize any adverse significant economic impacts or
10 maximize any beneficial significant economic impacts on
11 a substantial number of small entities. Such plan may be
12 amended by the agency at any time by publishing the revi-
13 sion in the Federal Register and subsequently placing the
14 amended plan on the agency's website.

15 “(b) The plan shall provide for the review of all such
16 agency rules existing on the date of the enactment of this
17 section within 10 years of the date of publication of the
18 plan in the Federal Register and for review of rules adopt-
19 ed after the date of enactment of this section within 10
20 years after the publication of the final rule in the Federal
21 Register. If the head of the agency determines that com-
22 pletion of the review of existing rules is not feasible by
23 the established date, the head of the agency shall so certify
24 in a statement published in the Federal Register and may
25 extend the review for not longer than 2 years after publi-

1 cation of notice of extension in the Federal Register. Such
2 certification and notice shall be sent to the Chief Counsel
3 for Advocacy of the Small Business Administration and
4 the Congress.

5 “(c) The plan shall include a section that details how
6 an agency will conduct outreach to and meaningfully in-
7 clude small businesses (including small business concerns
8 owned and controlled by women, small business concerns
9 owned and controlled by veterans, and small business con-
10 cerns owned and controlled by socially and economically
11 disadvantaged individuals (as such terms are defined in
12 the Small Business Act)) for the purposes of carrying out
13 this section. The agency shall include in this section a plan
14 for how the agency will contact small businesses and gath-
15 er their input on existing agency rules.

16 “(d) Each agency shall annually submit a report re-
17 garding the results of its review pursuant to such plan
18 to the Congress, the Chief Counsel for Advocacy of the
19 Small Business Administration, and, in the case of agen-
20 cies other than independent regulatory agencies (as de-
21 fined in section 3502(5) of title 44) to the Administrator
22 of the Office of Information and Regulatory Affairs of the
23 Office of Management and Budget. Such report shall in-
24 clude the identification of any rule with respect to which
25 the head of the agency made a determination described

1 in paragraph (5) or (6) of subsection (e) and a detailed
2 explanation of the reasons for such determination.

3 “(e) In reviewing a rule pursuant to subsections (a)
4 through (d), the agency shall amend or rescind the rule
5 to minimize any adverse significant economic impact on
6 a substantial number of small entities or disproportionate
7 economic impact on a specific class of small entities, or
8 maximize any beneficial significant economic impact of the
9 rule on a substantial number of small entities to the great-
10 est extent possible, consistent with the stated objectives
11 of applicable statutes. In amending or rescinding the rule,
12 the agency shall consider the following factors:

13 “(1) The continued need for the rule.

14 “(2) The nature of complaints received by the
15 agency from small entities concerning the rule.

16 “(3) Comments by the Regulatory Enforcement
17 Ombudsman and the Chief Counsel for Advocacy of
18 the Small Business Administration.

19 “(4) The complexity of the rule.

20 “(5) The extent to which the rule overlaps, du-
21 plicates, or conflicts with other Federal rules and,
22 unless the head of the agency determines it to be in-
23 feasible, State, territorial, and local rules.

24 “(6) The contribution of the rule to the cumu-
25 lative economic impact of all Federal rules on the

1 class of small entities affected by the rule, unless the
2 head of the agency determines that such calculations
3 cannot be made and reports that determination in
4 the annual report required under subsection (d).

5 “(7) The length of time since the rule has been
6 evaluated or the degree to which technology, eco-
7 nomic conditions, or other factors have changed in
8 the area affected by the rule.

9 “(f) Each year, each agency shall publish in the Fed-
10 eral Register and on its website a list of rules to be re-
11 viewed pursuant to such plan. The agency shall include
12 in the publication a solicitation of public comments on any
13 further inclusions or exclusions of rules from the list, and
14 shall respond to such comments. Such publication shall
15 include a brief description of the rule, the reason why the
16 agency determined that it has a significant economic im-
17 pact on a substantial number of small entities (without
18 regard to whether it had prepared a final regulatory flexi-
19 bility analysis for the rule), and request comments from
20 the public, the Chief Counsel for Advocacy of the Small
21 Business Administration, and the Regulatory Enforce-
22 ment Ombudsman concerning the enforcement of the
23 rule.”.

1 **SEC. 308. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
2 **QUIREMENTS OF THE REGULATORY FLEXI-**
3 **BILITY ACT AVAILABLE AFTER PUBLICATION**
4 **OF THE FINAL RULE.**

5 (a) IN GENERAL.—Paragraph (1) of section 611(a)
6 of title 5, United States Code, is amended by striking
7 “final agency action” and inserting “such rule”.

8 (b) JURISDICTION.—Paragraph (2) of such section is
9 amended by inserting “(or which would have such jurisdic-
10 tion if publication of the final rule constituted final agency
11 action)” after “provision of law,”.

12 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of
13 such section is amended—

14 (1) by striking “final agency action” and insert-
15 ing “publication of the final rule”; and

16 (2) by inserting “, in the case of a rule for
17 which the date of final agency action is the same
18 date as the publication of the final rule,” after “ex-
19 cept that”.

20 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
21 CACY.—Subsection (b) of section 612 of title 5, United
22 States Code, is amended by inserting before the first pe-
23 riod “or agency compliance with section 601, 603, 604,
24 605(b), 609, or 610”.

1 **SEC. 309. JURISDICTION OF COURT OF APPEALS OVER**
2 **RULES IMPLEMENTING THE REGULATORY**
3 **FLEXIBILITY ACT.**

4 (a) IN GENERAL.—Section 2342 of title 28, United
5 States Code, is amended—

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

8 (2) in paragraph (7), by striking the period at
9 the end and inserting “; and”; and

10 (3) by inserting after paragraph (7) the fol-
11 lowing new paragraph:

12 “(8) all final rules under section 608(a) of title
13 5.”.

14 (b) CONFORMING AMENDMENTS.—Paragraph (3) of
15 section 2341 of title 28, United States Code, is amended—

16 (1) in subparagraph (D), by striking “and” at
17 the end;

18 (2) in subparagraph (E), by striking the period
19 at the end and inserting “; and”; and

20 (3) by adding at the end the following new sub-
21 paragraph:

22 “(F) the Office of Advocacy of the Small
23 Business Administration, when the final rule is
24 under section 608(a) of title 5.”.

25 (c) AUTHORIZATION TO INTERVENE AND COMMENT
26 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-

1 DURE.—Subsection (b) of section 612 of title 5, United
2 States Code, is amended by inserting “chapter 5, and
3 chapter 7,” after “this chapter,”.

4 **SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
5 **NESS CONCERN SIZE STANDARDS BY CHIEF**
6 **COUNSEL FOR ADVOCACY.**

7 (a) IN GENERAL.—Subparagraph (A) of section
8 3(a)(2) of the Small Business Act (15 U.S.C.
9 632(a)(2)(A)) is amended to read as follows:

10 “(A) IN GENERAL.—In addition to the cri-
11 teria specified in paragraph (1)—

12 “(i) the Administrator may specify de-
13 tailed definitions or standards by which a
14 business concern may be determined to be
15 a small business concern for purposes of
16 this Act or the Small Business Investment
17 Act of 1958; and

18 “(ii) the Chief Counsel for Advocacy
19 may specify such definitions or standards
20 for purposes of any other Act.”.

21 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
22 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
23 632(a)(2)(C)(iii)) is amended to read as follows:

24 “(iii) except in the case of a size
25 standard prescribed by the Administrator,

1 is approved by the Chief Counsel for Advoca-
2 cacy.”.

3 (c) INDUSTRY VARIATION.—Paragraph (3) of section
4 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
5 amended—

6 (1) by inserting “or Chief Counsel for Advoca-
7 cacy, as appropriate” before “shall ensure”; and

8 (2) by inserting “or Chief Counsel for Advoca-
9 cacy” before the period at the end.

10 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-
11 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small
12 Business Act (15 U.S.C. 632(a)) is amended by adding
13 at the end the following new paragraph:

14 “(9) JUDICIAL REVIEW OF STANDARDS AP-
15 PROVED BY CHIEF COUNSEL.—In the case of an ac-
16 tion for judicial review of a rule which includes a
17 definition or standard approved by the Chief Counsel
18 for Advocacy under this subsection, the party seek-
19 ing such review shall be entitled to join the Chief
20 Counsel as a party in such action.”.

21 **SEC. 311. CLERICAL AMENDMENTS.**

22 (a) DEFINITIONS.—Section 601 of title 5, United
23 States Code, is amended—

24 (1) in paragraph (1)—

1 (A) by striking the semicolon at the end
2 and inserting a period; and

3 (B) by striking “(1) the term” and insert-
4 ing the following:

5 “(1) AGENCY.—The term”;

6 (2) in paragraph (3)—

7 (A) by striking the semicolon at the end
8 and inserting a period; and

9 (B) by striking “(3) the term” and insert-
10 ing the following:

11 “(3) SMALL BUSINESS.—The term”;

12 (3) in paragraph (5)—

13 (A) by striking the semicolon at the end
14 and inserting a period; and

15 (B) by striking “(5) the term” and insert-
16 ing the following:

17 “(5) SMALL GOVERNMENTAL JURISDICTION.—

18 The term”; and

19 (4) in paragraph (6)—

20 (A) by striking “; and” and inserting a pe-
21 riod; and

22 (B) by striking “(6) the term” and insert-
23 ing the following:

24 “(6) SMALL ENTITY.—The term”.

1 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-
2 CATIONS.—The heading of section 605 of title 5, United
3 States Code, is amended to read as follows:

4 **“§ 605. Incorporations by reference and certifi-**
5 **cations”.**

6 (c) TABLE OF SECTIONS.—The table of sections for
7 chapter 6 of title 5, United States Code, is amended as
8 follows:

9 (1) By striking the item relating to section 605
10 and inserting the following new item:

“605. Incorporations by reference and certifications.”.

11 (2) By striking the item relating to section 607
12 and inserting the following new item:

“607. Quantification requirements.”.

13 (3) By striking the item relating to section 608
14 and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy.”.

15 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER
16 6.—Chapter 6 of title 5, United States Code, is amended
17 in section 603(d)—

18 (1) by striking paragraph (2);

19 (2) by striking “(1) For a covered agency,” and
20 inserting “For a covered agency,”;

21 (3) by striking “(A) any” and inserting “(1)
22 any”;

1 (4) by striking “(B) any” and inserting “(2)
2 any”; and
3 (5) by striking “(C) advice” and inserting “(3)
4 advice”.

5 **SEC. 312. AGENCY PREPARATION OF GUIDES.**

6 Section 212(a)(5) the Small Business Regulatory En-
7 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
8 amended to read as follows:

9 “(5) AGENCY PREPARATION OF GUIDES.—The
10 agency shall, in its sole discretion, taking into ac-
11 count the subject matter of the rule and the lan-
12 guage of relevant statutes, ensure that the guide is
13 written using sufficiently plain language likely to be
14 understood by affected small entities. Agencies may
15 prepare separate guides covering groups or classes of
16 similarly affected small entities and may cooperate
17 with associations of small entities to distribute such
18 guides. In developing guides, agencies shall solicit
19 input from affected small entities or associations of
20 affected small entities. An agency may prepare
21 guides and apply this section with respect to a rule
22 or a group of related rules.”.

23 **SEC. 313. COMPTROLLER GENERAL REPORT.**

24 Not later than 90 days after the date of enactment
25 of this title, the Comptroller General of the United States

1 shall complete and publish a study that examines whether
 2 the Chief Counsel for Advocacy of the Small Business Ad-
 3 ministration has the capacity and resources to carry out
 4 the duties of the Chief Counsel under this title and the
 5 amendments made by this title.

6 **TITLE IV—REQUIRE EVALUA-**
 7 **TION BEFORE IMPLE-**
 8 **MENTING EXECUTIVE**
 9 **WISHLISTS ACT**

10 **SEC. 401. SHORT TITLE.**

11 This title may be cited as the “Require Evaluation
 12 before Implementing Executive Wishlists Act” or as the
 13 “REVIEW Act”.

14 **SEC. 402. RELIEF PENDING REVIEW.**

15 Section 705 of title 5, United States Code, is amend-
 16 ed—

17 (1) by striking “When” and inserting the fol-
 18 lowing:

19 “(a) IN GENERAL.—When”; and

20 (2) by adding at the end the following:

21 “(b) HIGH-IMPACT RULES.—

22 “(1) DEFINITIONS.—In this subsection—

23 “(A) the term ‘Administrator’ means the
 24 Administrator of the Office of Information and

1 Regulatory Affairs of the Office of Management
2 and Budget; and

3 “(B) the term ‘high-impact rule’ means
4 any rule that the Administrator determines may
5 impose an annual cost on the economy of not
6 less than \$1,000,000,000.

7 “(2) IDENTIFICATION.—A final rule may not be
8 published or take effect until the agency making the
9 rule submits the rule to the Administrator and the
10 Administrator makes a determination as to whether
11 the rule is a high-impact rule, which shall be pub-
12 lished by the agency with the final rule.

13 “(3) RELIEF.—

14 “(A) IN GENERAL.—Except as provided in
15 subparagraph (B), an agency shall postpone the
16 effective date of a high-impact rule of the agen-
17 cy until the final disposition of all actions seek-
18 ing judicial review of the rule.

19 “(B) FAILURE TO TIMELY SEEK JUDICIAL
20 REVIEW.—Notwithstanding section 553(i), if no
21 person seeks judicial review of a high-impact
22 rule—

23 “(i) during any period explicitly pro-
24 vided for judicial review under the statute
25 authorizing the making of the rule; or

1 “(ii) if no such period is explicitly pro-
 2 vided for, during the 60-day period begin-
 3 ning on the date on which the high-impact
 4 rule is published in the Federal Register,
 5 the high-impact rule may take effect as early as
 6 the date on which the applicable period ends.

7 “(4) RULE OF CONSTRUCTION.—Nothing in
 8 this subsection may be construed to impose any limi-
 9 tation under law on any court against the issuance
 10 of any order enjoining the implementation of any
 11 rule.”.

12 **TITLE V—ALL ECONOMIC REGU-** 13 **LATIONS ARE TRANSPARENT** 14 **ACT**

15 **SEC. 501. SHORT TITLE.**

16 This title may be cited as the “All Economic Regula-
 17 tions are Transparent Act” or the “ALERT Act”.

18 **SEC. 502. OFFICE OF INFORMATION AND REGULATORY AF-** 19 **FAIRS PUBLICATION OF INFORMATION RE-** 20 **LATING TO RULES.**

21 (a) AMENDMENT.—Title 5, United States Code, is
 22 amended by inserting after chapter 6, the following new
 23 chapter:

1 **“CHAPTER 6A—OFFICE OF INFORMATION**
 2 **AND REGULATORY AFFAIRS PUBLICA-**
 3 **TION OF INFORMATION RELATING TO**
 4 **RULES**

“Sec. 651. Agency monthly submission to office of information and regulatory affairs.

“Sec. 652. Office of information and regulatory affairs publications.

“Sec. 653. Requirement for rules to appear in agency-specific monthly publication.

“Sec. 654. Definitions.

5 **“SEC. 651. AGENCY MONTHLY SUBMISSION TO OFFICE OF**
 6 **INFORMATION AND REGULATORY AFFAIRS.**

7 “On a monthly basis, the head of each agency shall
 8 submit to the Administrator of the Office of Information
 9 and Regulatory Affairs (referred to in this chapter as the
 10 ‘Administrator’), in such a manner as the Administrator
 11 may reasonably require, the following information:

12 “(1) For each rule that the agency expects to
 13 propose or finalize during the 12-month period fol-
 14 lowing the month covered by the monthly submis-
 15 sion:

16 “(A) A summary of the nature of the rule,
 17 including the regulation identifier number and
 18 the docket number for the rule.

19 “(B) The objectives of and legal basis for
 20 the issuance of the rule, including—

21 “(i) any statutory or judicial deadline;
 22 and

1 “(ii) whether the legal basis restricts
2 or precludes the agency from conducting
3 an analysis of the costs or benefits of the
4 rule during the rule making, and if not,
5 whether the agency plans to conduct an
6 analysis of the costs or benefits of the rule
7 during the rule making.

8 “(C) Whether the agency plans to claim an
9 exemption from the requirements of section 553
10 pursuant to section 553(g)(2)(A).

11 “(D) The stage of the rule making as of
12 the date of submission.

13 “(E) Whether the rule is subject to review
14 under section 610.

15 “(2) For any rule for which the agency expects
16 to finalize during the 12-month period following the
17 month covered by the monthly submission and has
18 issued a general notice of proposed rule making—

19 “(A) an approximate schedule for com-
20 pleting action on the rule;

21 “(B) an estimate of whether the rule will
22 cost—

23 “(i) less than \$50,000,000;

24 “(ii) \$50,000,000 or more but less
25 than \$100,000,000;

1 “(iii) \$100,000,000 or more but less
2 than \$500,000,000;

3 “(iv) \$500,000,000 or more but less
4 than \$1,000,000,000;

5 “(v) \$1,000,000,000 or more but less
6 than \$5,000,000,000;

7 “(vi) \$5,000,000,000 or more but less
8 than \$10,000,000,000; or

9 “(vii) \$10,000,000,000 or more;

10 “(C) any estimate of the economic effects
11 of the rule, including the imposition of un-
12 funded mandates and any estimate of the net
13 effect that the rule will have on the number of
14 jobs in the United States, that was considered
15 in drafting the rule, or, if no such estimate is
16 available, a statement affirming that no infor-
17 mation on the economic effects, including the
18 effect on the number of jobs, of the rule has
19 been considered; and

20 “(D) a list of all influential scientific infor-
21 mation disseminated or expected to be dissemi-
22 nated by the agency relating to the rule, includ-
23 ing any peer review plans for the information,
24 including—

1 “(i) the date the information or peer
2 review was or is expected to be received by
3 the agency;

4 “(ii) the date the information or peer
5 review was publically disclosed or is ex-
6 pected to be publically disclosed, and, if
7 that date is altered in subsequent reports,
8 a brief explanation for the change; and

9 “(iii) the Internet address of the in-
10 formation or peer review completed and
11 disclosed or of where the information or
12 peer review will be found, once completed
13 and disclosed.

14 **“SEC. 652. OFFICE OF INFORMATION AND REGULATORY AF-**
15 **FAIRS PUBLICATIONS.**

16 “(a) AGENCY-SPECIFIC INFORMATION PUBLISHED
17 MONTHLY.—Not later than 30 days after the submission
18 of information pursuant to section 651, the Administrator
19 shall make such information publicly available on the
20 Internet.

21 “(b) CUMULATIVE ASSESSMENT OF AGENCY RULE
22 MAKING PUBLISHED ANNUALLY.—

23 “(1) PUBLICATION IN THE FEDERAL REG-
24 ISTER.—Not later than October 1 of each year, the

1 Administrator shall publish in the Federal Register
2 the following, with respect to the previous year:

3 “(A) The information that the Adminis-
4 trator received from the head of each agency
5 under section 651.

6 “(B) The number of rules and a list of
7 each such rule—

8 “(i) that was proposed by each agen-
9 cy, including, for each such rule, an indica-
10 tion of whether the issuing agency con-
11 ducted an analysis of the costs or benefits
12 of the rule; and

13 “(ii) that was finalized by each agen-
14 cy, including for each such rule an indica-
15 tion of whether—

16 “(I) the issuing agency conducted
17 an analysis of the costs or benefits of
18 the rule;

19 “(II) the agency claimed an ex-
20 emption from the procedures under
21 section 553 pursuant to section
22 553(g)(2)(A); and

23 “(III) the rule was issued pursu-
24 ant to a statutory mandate or the rule

1 making is committed to agency discre-
2 tion by law.

3 “(C) The number of agency actions and a
4 list of each such action taken by each agency
5 that—

6 “(i) repealed a rule;

7 “(ii) reduced the scope of a rule;

8 “(iii) reduced the cost of a rule; or

9 “(iv) accelerated the expiration date
10 of a rule.

11 “(D) The total cost (without reducing the
12 cost by any offsetting benefits) of all rules pro-
13 posed or finalized, the total cost of any un-
14 funded mandates imposed by all such rules, and
15 the number of rules for which an estimate of
16 the cost of the rule was not available.

17 “(2) PUBLICATION ON THE INTERNET.—Not
18 later than October 1 of each year, the Administrator
19 shall make publicly available on the Internet the fol-
20 lowing:

21 “(A) The analysis of the costs or benefits,
22 if conducted, for each proposed rule or final
23 rule issued by an agency for the previous year.

1 “(B) The docket number and regulation
2 identifier number for each proposed or final
3 rule issued by an agency for the previous year.

4 “(C) The number of rules and a list of
5 each such rule reviewed by the Director of the
6 Office of Management and Budget for the pre-
7 vious year, and the authority under which each
8 such review was conducted.

9 “(D) The number of rules and a list of
10 each such rule for which the head of an agency
11 completed a review under section 610 for the
12 previous year.

13 “(E) The number of rules and a list of
14 each such rule submitted to the Comptroller
15 General under section 801.

16 “(F) The number of rules and a list of
17 each such rule for which a resolution of dis-
18 approval was introduced in either the House of
19 Representatives or the Senate under section
20 802.

21 **“SEC. 653. REQUIREMENT FOR RULES TO APPEAR IN AGEN-**
22 **CY-SPECIFIC MONTHLY PUBLICATION.**

23 “(a) IN GENERAL.—Subject to subsection (b), a rule
24 may not take effect until the information required to be
25 made publicly available on the Internet regarding such

1 rule pursuant to section 652(a) has been so available for
 2 not less than 6 months.

3 “(b) EXCEPTIONS.—The requirement of subsection
 4 (a) shall not apply in the case of a rule—

5 “(1) for which the agency issuing the rule
 6 claims an exception under section 553(g)(2)(A); or

7 “(2) which the President determines by Execu-
 8 tive order should take effect because the rule is—

9 “(A) necessary because of an imminent
 10 threat to health or safety or other emergency;

11 “(B) necessary for the enforcement of
 12 criminal laws;

13 “(C) necessary for national security; or

14 “(D) issued pursuant to any statute imple-
 15 menting an international trade agreement.

16 **“SEC. 654. DEFINITIONS.**

17 “In this chapter, the terms ‘agency’, ‘agency action’,
 18 ‘rule’, and ‘rule making’ have the meanings given those
 19 terms in section 551, and the term ‘unfunded mandate’
 20 has the meaning given the term ‘Federal mandate’ in sec-
 21 tion 421(6) of the Congressional Budget Act of 1974 (2
 22 U.S.C. 658(6)).”.

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 24 The table of chapters for part I of title 5, United States

1 Code, is amended by inserting after the item relating to
 2 chapter 5, the following:

“6. The Analysis of Regulatory Functions	601
“6A. Office of Information and Regulatory Affairs Publication of In- formation Relating to Rules	651”.

3 (c) EFFECTIVE DATES.—

4 (1) AGENCY MONTHLY SUBMISSION TO THE OF-
 5 FICE OF INFORMATION AND REGULATORY AF-
 6 FAIRS.—The first submission required pursuant to
 7 section 651 of title 5, United States Code, as added
 8 by subsection (a), shall be submitted not later than
 9 30 days after the date of the enactment of this title,
 10 and monthly thereafter.

11 (2) CUMULATIVE ASSESSMENT OF AGENCY
 12 RULE MAKING.—

13 (A) IN GENERAL.—Subsection (b) of sec-
 14 tion 652 of title 5, United States Code, as
 15 added by subsection (a), shall take effect on the
 16 date that is 60 days after the date of the enact-
 17 ment of this title.

18 (B) DEADLINE.—The first requirement to
 19 publish or make available, as the case may be,
 20 under subsection (b) of section 652 of title 5,
 21 United States Code, as added by subsection (a),
 22 shall be the first October 1 after the effective
 23 date of such subsection.

(C) FIRST PUBLICATION.—The requirement under section 652(b)(2)(A) of title 5, United States Code, as added by subsection (a), shall include for the first publication, any analysis of the costs or benefits conducted for a proposed or final rule, for the 10 years before the date of the enactment of this title.

(3) REQUIREMENT FOR RULES TO APPEAR IN AGENCY-SPECIFIC MONTHLY PUBLICATION.—Section 653 of title 5, United States Code, as added by subsection (a), shall take effect on the date that is 8 months after the date of the enactment of this title.

TITLE VI—PROVIDING ACCOUNT- ABILITY THROUGH TRANSPARENCY ACT

SEC. 601. SHORT TITLE.

This title may be cited as the “Providing Accountability Through Transparency Act”.

SEC. 602. REQUIREMENT TO POST A 100 WORD SUMMARY TO REGULATIONS.GOV.

Section 553(d)(1) of title 5, United States Code, as inserted by section 103(b) of this Act, is amended—

(1) in subparagraph (G)(iv) by striking “; and” and inserting “;”;

1 (2) in subparagraph (H)(ii), by striking the pe-
2 riod at the end and inserting “; and”; and

3 (3) by inserting after subparagraph (H) the fol-
4 lowing:

5 “(I) the internet address of a summary of
6 not more than 100 words in length of the pro-
7 posed rule, in plain language, that shall be
8 posted on the internet website under section
9 206(d) of the E–Government Act of 2002 (44
10 U.S.C. 3501 note) (commonly known as regula-
11 tions.gov).”.

Passed the House of Representatives January 11,
2017.

Attest:

KAREN L. HAAS,
Clerk.