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1ST SESSION

# H. R. 5

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IN THE SENATE OF THE UNITED STATES

JANUARY 12, 2017

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

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## 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 authority 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 flexibility 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 regulatory 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-

1 cluding quantitative and qualitative assessment, of the  
2 costs and benefits of proposed and final rules and other  
3 economic issues or issues related to risk that are relevant  
4 to rule making under this title. The rigor of cost-benefit  
5 analysis required by such guidelines shall be commensu-  
6 rate, in the Administrator’s determination, with the eco-  
7 nomic impact of the rule.

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

15       “(2) The Administrator of the Office of Information  
16 and Regulatory Affairs shall also issue guidelines to pro-  
17 mote coordination, simplification and harmonization of  
18 agency rules during the rule making process and other-  
19 wise. Such guidelines shall assure that each agency avoids  
20 regulations that are inconsistent or incompatible with, or  
21 duplicative of, its other regulations and those of other  
22 Federal agencies and drafts its regulations to be simple  
23 and easy to understand, with the goal of minimizing the  
24 potential for uncertainty and litigation arising from such  
25 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       “(1) 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

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

3 “(C) AGENCY DEFINITIONS.—Subpara-  
4 graphs (A) and (B) shall not apply to the ex-  
5 tent that an agency, after consultation with the  
6 Office of Advocacy of the Small Business Ad-  
7 ministration and after opportunity for public  
8 comment, establishes one or more definitions  
9 for such term which are appropriate to the ac-  
10 tivities of the agency and publishes such defini-  
11 tions in the Federal Register.”.

12 **SEC. 303. EXPANSION OF REPORT OF REGULATORY AGEN-**

13 **DA.**

14 Section 602 of title 5, United States Code, is amend-  
15 ed—

16 (1) in subsection (a)—

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

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

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

23 “(3) a brief description of the sector of the  
24 North American Industrial Classification System  
25 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 dispro-  
17 portionate 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 Advo-  
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 Advo-  
7           cacy, as appropriate” before “shall ensure”; and

8           (2) by inserting “or Chief Counsel for Advo-  
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.

1 (C) FIRST PUBLICATION.—The require-  
2 ment under section 652(b)(2)(A) of title 5,  
3 United States Code, as added by subsection (a),  
4 shall include for the first publication, any anal-  
5 ysis of the costs or benefits conducted for a  
6 proposed or final rule, for the 10 years before  
7 the date of the enactment of this title.

8 (3) REQUIREMENT FOR RULES TO APPEAR IN  
9 AGENCY-SPECIFIC MONTHLY PUBLICATION.—Section  
10 653 of title 5, United States Code, as added by sub-  
11 section (a), shall take effect on the date that is 8  
12 months after the date of the enactment of this title.

13 **TITLE VI—PROVIDING ACCOUNT-**  
14 **ABILITY THROUGH TRANS-**  
15 **PARENCY ACT**

16 **SEC. 601. SHORT TITLE.**

17 This title may be cited as the “Providing Account-  
18 ability Through Transparency Act”.

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

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

23 (1) in subparagraph (G)(iv) by striking “; and”  
24 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.*