

115TH CONGRESS  
1ST SESSION

# S. 951

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

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IN THE SENATE OF THE UNITED STATES

APRIL 26, 2017

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

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## A BILL

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

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

3       **SECTION 1. SHORT TITLE.**

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

6       **SEC. 2. DEFINITIONS.**

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

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

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

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

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

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

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

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

14 “(B) sets forth a policy on a statutory,  
15 regulatory, or technical issue or an interpreta-  
16 tion of a statutory or regulatory issue;

17 “(16) ‘high-impact rule’ means any rule that  
18 the Administrator determines is likely to cause an  
19 annual effect on the economy of \$1,000,000,000 or  
20 more, adjusted once every 5 years to reflect in-  
21 creases in the Consumer Price Index for All Urban  
22 Consumers, as published by the Bureau of Labor  
23 Statistics of the Department of Labor;

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

1           “(A) an annual effect on the economy of  
2           \$100,000,000 or more, adjusted once every 5  
3           years to reflect increases in the Consumer Price  
4           Index for All Urban Consumers, as published  
5           by the Bureau of Labor Statistics of the De-  
6           partment of Labor;

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

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

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

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

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

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

11          “(19) ‘Office of Information and Regulatory Af-  
 12          fairs’ means the office established under section  
 13          3503 of title 44 and any successor to that office;  
 14          and

15          “(20) ‘Administrator’ means the Administrator  
 16          of the Office of Information and Regulatory Af-  
 17          fairs.”.

18 **SEC. 3. RULEMAKING.**

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

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

23               (2) in subsection (a), by striking “(a) This sec-  
 24               tion applies” and inserting “(a) APPLICABILITY—  
 25               This section applies”; and

1           (3) by striking subsections (b) through (e) and  
2           inserting the following:

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

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

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

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

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

22          “(5) For any major rule or high-impact rule,  
23          unless prohibited by law, the potential costs and  
24          benefits associated with potential alternative rules

and other responses considered under paragraph (4),  
including quantitative and qualitative analyses of—

“(A) the direct costs and benefits;

“(B) the nature and degree of risks addressed by the rule and the countervailing risks that might be posed by agency action; and

“(C) to the extent practicable, the cumulative and indirect costs and benefits.

“(c) NOTICE OF PROPOSED RULEMAKING.—

“(1) IN GENERAL.—If an agency determines that the objectives of the agency require the agency to issue a rule, the agency shall notify the Administrator and publish a notice of proposed rulemaking in the Federal Register, which shall include—

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

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

“(C) the text of the proposed rule;

“(D) a summary of information known to the agency concerning the considerations described in subsection (b); and

“(E) where otherwise consistent with applicable law, for any major rule or high-impact rule—

1 “(i) a reasoned preliminary expla-  
 2 nation regarding how—

3 “(I) the proposed rule meets the  
 4 statutory objectives; and

5 “(II) the benefits of the proposed  
 6 rule justify the costs; and

7 “(ii) a discussion of—

8 “(I) the costs and benefits of al-  
 9 ternatives considered by the agency  
 10 under subsection (b)(4);

11 “(II) whether the alternatives  
 12 considered by the agency under sub-  
 13 section (b)(4) meet relevant statutory  
 14 objectives; and

15 “(III) the reasons why the agen-  
 16 cy did not propose an alternative con-  
 17 sidered by the agency under sub-  
 18 section (b)(4).

19 “(2) ACCESSIBILITY.—

20 “(A) IN GENERAL.—Except as provided in  
 21 subparagraph (B), not later than the date on  
 22 which an agency publishes a notice of proposed  
 23 rulemaking under paragraph (1), all studies,  
 24 models, scientific literature, and other informa-  
 25 tion developed or relied upon by the agency,

1 and actions taken by the agency to obtain that  
 2 information, in connection with the determina-  
 3 tion of the agency to propose the rule that is  
 4 the subject of the rulemaking shall be placed in  
 5 the docket for the proposed rule and made ac-  
 6 cessible to the public.

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

10 “(3) INFORMATION QUALITY.—If an agency  
 11 proposes a rule that rests upon scientific, technical,  
 12 or economic information, the agency shall propose  
 13 the rule on the basis of the best reasonably available  
 14 scientific, technical, or economic information.

15 “(4) PUBLIC COMMENT.—

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

23 “(i) if a public hearing is convened  
 24 under subsection (e), reasonable oppor-  
 25 tunity for oral presentation shall be pro-



1 vided at the public hearing as provided in  
2 subsection (e); and

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

7 “(I) sections 556 and 557 shall  
8 apply; and

9 “(II) the petition procedures of  
10 subsection (e) shall not apply.

11 “(B) TIMELINE.—An agency shall provide  
12 not less than 60 days, or, with respect to a pro-  
13 posed major rule or a proposed high-impact  
14 rule, not less than 90 days, for interested per-  
15 sons to submit written material, data, views, or  
16 arguments under subparagraph (A).

17 “(5) CHANGE OF CLASSIFICATION AFTER PUB-  
18 LICATION OF NOTICE.—If, after an agency submits  
19 the notification and publishes the notice of proposed  
20 rulemaking required under paragraph (1), a pro-  
21 posed rule is determined to be a major rule or a  
22 high-impact rule, the agency shall—

23 “(A) publish a notice in the Federal Reg-  
24 ister with respect to the change of the classi-  
25 fication of the rule; and

1 “(B) allow interested persons an additional  
2 opportunity of not less than 30 days to com-  
3 ment on—

4 “(i) the rule; and

5 “(ii) the change of the classification of  
6 the rule.

7 “(6) PROHIBITION ON CERTAIN COMMUNICA-  
8 TIONS.—

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

22 “(i) directly advocates, in support of  
23 or against the proposed rule, for the sub-  
24 mission of information that will form part  
25 of the record for the proposed rule;

1 “(ii) appeals to the public, or solicits  
2 a third party, to undertake advocacy in  
3 support of or against the proposed rule; or  
4 “(iii) is directly or indirectly for the  
5 purpose of publicity or propaganda within  
6 the United States in a manner that Con-  
7 gress has not authorized.

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

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

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

19 “(A) establish an electronic docket for that  
20 rulemaking, which may have a physical counter-  
21 part; and

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

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

4 “(ii) reference the legal authority  
5 under which the rule would be proposed;

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

11 “(iv) indicate how interested persons  
12 may submit written material for the dock-  
13 et.

14 “(2) ACCESSIBILITY.—All information provided  
15 to the agency under paragraph (1) shall be promptly  
16 placed in the docket and made accessible to the pub-  
17 lic.

18 “(3) APPLICABILITY.—With respect to the al-  
19 ternatives and other ideas proposed under paragraph  
20 (1)(B)(iii)—

21 “(A) the alternatives and other ideas are  
22 for the benefit of—

23 “(i) the agency receiving the alter-  
24 natives and other ideas; and

25 “(ii) the public; and

1           “(B) the agency receiving the alternatives  
2           and other ideas may respond to the alternatives  
3           and other ideas.

4           “(4) TIMETABLE.—

5           “(A) IN GENERAL.—With respect to a  
6           rulemaking for a major rule or a high-impact  
7           rule, the agency proposing the rule shall estab-  
8           lish a timetable for the rulemaking that—

9                   “(i) includes intermediate and final  
10                  completion dates for actions of the agency;  
11                  and

12                  “(ii) shall be published in the elec-  
13                  tronic docket established under paragraph  
14                  (1)(A) with respect to the rulemaking.

15           “(B) CONSIDERATION OF FACTORS.—In  
16           establishing the timetable required under sub-  
17           paragraph (A), an agency shall consider rel-  
18           evant factors, including—

19                   “(i) the size and complexity of the  
20                  rulemaking;

21                   “(ii) the resources available to the  
22                  agency;

23                   “(iii) the national significance of the  
24                  rulemaking; and

1 “(iv) all statutory requirements that  
2 govern the timing of the rulemaking.

3 “(C) REPORT REQUIRED.—

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

12 “(ii) CONTENTS; PUBLICATION IN  
13 FEDERAL REGISTER.—A report submitted  
14 under clause (i) shall—

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

17 “(II) be published—

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

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

24 “(5) NOTICE OF DETERMINATION OF OTHER  
25 AGENCY COURSE.—

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

6                   “(i) publish a notice of determination  
 7                   of other agency course; and

8                   “(ii) if the agency intends to issue a  
 9                   rule, comply with the procedures required  
 10                  under subsection (c).

11           “(B) CONTENTS.—A notice of determina-  
 12           tion of other agency course published under  
 13           subparagraph (A)(i) shall include—

14                   “(i) a description of the alternative re-  
 15                   sponse the agency has determined to  
 16                   adopt; and

17                   “(ii) if the agency intends to issue a  
 18                   rule, any information required under sub-  
 19                   section (c).

20           “(e) PUBLIC HEARING FOR HIGH-IMPACT RULES  
 21           AND CERTAIN MAJOR RULES.—

22                   “(1) PETITION FOR PUBLIC HEARING.—

23                   “(A) IN GENERAL.—Before the date on  
 24                   which the comment period closes with respect to  
 25                   a proposed high-impact rule or a proposed

1 major rule described in section 551(18)(A), an  
2 interested person may petition the agency that  
3 proposed the rule to hold a public hearing in ac-  
4 cordance with this subsection.

5 “(B) PETITION FOR PUBLIC HEARING FOR  
6 HIGH-IMPACT RULES.—

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

13 “(I) the proposed rule is based  
14 on conclusions with respect to 1 or  
15 more specific scientific, technical, eco-  
16 nomic, or other complex factual issues  
17 that are genuinely disputed;

18 “(II) with respect to a rule that  
19 the agency is required to reissue not  
20 less frequently than once every 3  
21 years, the interested person submit-  
22 ting the petition could not have raised  
23 the disputed factual issues described  
24 in subclause (I) during the 5-year pe-



1           riod preceding the date on which the  
2           petition is submitted; and

3                   “(III) the resolution of the dis-  
4           puted factual issues described in sub-  
5           clause (I) would likely have an effect  
6           on—

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

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

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

18                           “(I) findings by the agency  
19           that—

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

23                           “(bb) with respect to a rule  
24           that the agency is required to re-  
25           issue not less frequently than

1 once every 3 years, the interested  
2 person submitting the petition  
3 could have raised the disputed  
4 factual issues in the petition dur-  
5 ing the 5-year period preceding  
6 the date on which the petition is  
7 submitted; and

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

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

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

19 “(iii) INCLUSION IN THE RECORD.—A  
20 petition submitted under subparagraph (A)  
21 with respect to a high-impact rule and the  
22 decision of an agency with respect to the  
23 petition shall be included in the rulemaking  
24 record.

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

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

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

13               “(I) a hearing—

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

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

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

1                   disputed factual issues in the petition  
2                   during the 5-year period preceding the  
3                   date on which the petition is sub-  
4                   mitted.

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

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

14                         “(A) the proposed rule to be considered at  
15                         the hearing; and

16                         “(B) the factual issues to be considered at  
17                         the hearing.

18                  “(3) HEARING REQUIREMENTS.—

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

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

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

6           “(B) PROCEDURES.—

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

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

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

21               “(I) the appointment of an agen-  
 22               cy official or administrative law judge  
 23               to preside at the hearing;

24               “(II) the presentation by inter-  
 25               ested parties of relevant documentary

1 or oral evidence, unless the evidence is  
2 immaterial or unduly repetitious;

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

15 “(IV) when appropriate, and to  
16 the extent practicable, the consolida-  
17 tion of proceedings with respect to  
18 multiple petitions submitted under  
19 this subsection into a single hearing.

20 “(C) RECORD OF HEARING.—A transcript  
21 of testimony and exhibits, together with all pa-  
22 pers and requests filed in the hearing, shall  
23 constitute the exclusive record for decision of  
24 the factual issues addressed in a hearing held  
25 under this subsection.

1 “(4) JUDICIAL REVIEW.—

2 “(A) IN GENERAL.—Failure to petition for  
3 a hearing under this subsection shall not pre-  
4 clude judicial review of any claim that could  
5 have been raised in the hearing petition or at  
6 the hearing.

7 “(B) TIMING OF JUDICIAL REVIEW.—  
8 There shall be no judicial review of the disposi-  
9 tion of a petition by an agency under this sub-  
10 section until judicial review of the final action  
11 of the agency.

12 “(f) FINAL RULES.—

13 “(1) EFFECTIVENESS OF MAJOR OR HIGH-IM-  
14 PACT RULE.—

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

19 “(i) is considered under subsection  
20 (b)(4); and

21 “(ii) meets relevant statutory objec-  
22 tives.

23 “(B) EXCEPTION.—In a rulemaking for a  
24 major rule or a high-impact rule, an agency  
25 may adopt a rule that is more costly than the

1           most cost-effective alternative that would  
2           achieve the relevant statutory objectives only  
3           if—

4                   “(i) the additional benefits of the  
5                   more costly rule justify the additional costs  
6                   of that rule;

7                   “(ii) the agency specifically identifies  
8                   each additional benefit described in clause  
9                   (i) and the cost of each such additional  
10                  benefit; and

11                  “(iii) the agency explains why the  
12                  agency adopted a rule that is more costly  
13                  than the most cost-effective alternative.

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

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

20                   “(B) a reasoned determination by the  
21                   agency regarding the considerations described  
22                   in subsection (b);

23                   “(C) a response to each significant issue  
24                   raised in the comments on the proposed rule;  
25                   and



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

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

“(ii)(I) no alternative considered would achieve the relevant statutory objectives in a more cost-effective manner than the rule; or

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

“(3) INFORMATION QUALITY.—If an agency rulemaking rests upon scientific, technical, or economic information, the agency shall adopt a final rule on the basis of the best reasonably available scientific, technical, or economic information.

“(4) ACCESSIBILITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), not later than the date on which an agency publishes a notice of final rulemaking under paragraph (2), all studies, models, scientific literature, and other information developed or relied upon by the agency, and ac-

tions taken by the agency to obtain that information, in connection with the determination of the agency to finalize the rule that is the subject of the rulemaking shall be placed in the docket for the rule and made accessible to the public.

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

“(5) RULES ADOPTED AT THE END OF A PRESIDENTIAL ADMINISTRATION.—

“(A) IN GENERAL.—During the 60-day period beginning on a transitional inauguration day (as defined in section 3349a), with respect to any final rule that had been placed on file for public inspection by the Office of the Federal Register or published in the Federal Register as of the date of the inauguration, but which had not become effective by the date of the inauguration, the agency issuing the rule may, by order, delay the effective date of the rule for not more than 90 days for the purpose of obtaining public comment on whether—

“(i) the rule should be amended or rescinded; or

1 “(ii) the effective date of the rule  
2 should be further delayed.

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

8 “(g) APPLICABILITY.—

9 “(1) PRIMACY OF CERTAIN RULEMAKING CON-  
10 siderations and procedures in other federal  
11 laws.—

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

21 “(B) PROCEDURAL REQUIREMENTS.—If a  
22 rulemaking is authorized under a Federal law  
23 that requires an agency to follow or use, or pro-  
24 hibits an agency from following or using, a pro-  
25 cedure in a manner that is duplicative of, or

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

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

“(3) EXCEPTIONS FOR GOOD CAUSE.—

“(A) FINDING OF GOOD CAUSE.—

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

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

1 final rule or interim final rule, as applica-  
 2 ble, issued by the agency.

3 “(B) DIRECT FINAL RULES.—

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

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

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

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

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

under that clause if the agency determines that following the requirements would not expedite the issuance of the final rule.

“(iii) ADVERSE COMMENTS.—If an agency receives significant adverse comments with respect to a rule during the comment period established under clause (i)(II), the agency shall—

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

“(II) complete rulemaking in accordance with subsections (c), (d), (e), and (f), as applicable.

“(C) INTERIM FINAL RULES.—

“(i) IN GENERAL.—If an agency for good cause finds that compliance with subsection (c), (d), (e), or (f)(2)(B) before issuing a final rule is impracticable or contrary to the public interest, the agency shall issue an interim final rule by—

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

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

8 “(ii) INTERIM PERIOD.—

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

13 “(aa) rescind the interim  
 14 rule;

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

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

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

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

3                   “(4) EXEMPTION FOR MONETARY POLICY.—

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

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

15                  “(1) for guidance; or

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

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

19                  Each agency shall—

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

23                  “(2) on a continuing basis, invite interested  
24                  persons to submit, by electronic means, suggestions



for rules that warrant retrospective review and possible modification or repeal.

“(j) RULEMAKING GUIDELINES.—

“(1) ASSESSMENT OF RULES.—

“(A) IN GENERAL.—The Administrator shall establish guidelines for the assessment, including the quantitative and qualitative assessment, of—

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

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

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

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

“(B) AGENCY ANALYSIS OF RULES.—

“(i) IN GENERAL.—The rigor of the cost-benefit analysis required by the guidelines established under subparagraph (A) shall be commensurate, as determined by the Administrator, with the economic impact of a rule.

1                   “(ii) RISK ASSESSMENT GUIDE-  
 2                   LINES.—Guidelines for a risk assessment  
 3                   described in subparagraph (A)(iv) shall in-  
 4                   clude criteria for—

5                               “(I) selecting studies and models;

6                               “(II) evaluating and weighing  
 7                   evidence; and

8                               “(III) conducting peer reviews.

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

17                  “(2) SIMPLIFICATION OF RULES.—

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

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

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

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

10       “(3) CONSISTENCY IN RULEMAKING.—

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

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

20       “(ii) issue guidelines for the conduct  
21       of hearings under subsection (e), which  
22       shall provide a reasonable opportunity for  
23       cross-examination.

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

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

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

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

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

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

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

15           “(2) PROCEDURES TO ISSUE MAJOR GUID-  
16 ANCE.—Before issuing any major guidance, an agen-  
17 cy shall—

18                   “(A) make and document a reasoned deter-  
19           mination that—

20                           “(i) such guidance is understandable  
21                   and complies with relevant statutory objec-  
22                   tives and regulatory provisions; and

23                           “(ii) identifies the costs and benefits,  
24                   including all costs and benefits to be con-  
25                   sidered during a rulemaking under sub-

1 section (b), of requiring conduct con-  
 2 forming to such guidance and assures that  
 3 such benefits justify such costs; and

4 “(B) confer with the Administrator on the  
 5 issuance of the major guidance to ensure that  
 6 the guidance—

7 “(i) is reasonable;

8 “(ii) is understandable;

9 “(iii) is consistent with relevant statu-  
 10 tory and regulatory provisions and require-  
 11 ments or practices of other agencies;

12 “(iv) does not produce costs that are  
 13 unjustified by the benefits of the major  
 14 guidance; and

15 “(v) is otherwise appropriate.

16 “(3) ISSUANCE OF UPDATED GUIDANCE.—

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

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

23 “(i) not to issue guidance documents  
 24 that are inconsistent or incompatible with,

1 or duplicative of, other rules of the agency  
 2 and those of other agencies;

3 “(ii) to draft the guidance documents  
 4 of the agency to be simple and easy to un-  
 5 derstand, with the goal of minimizing the  
 6 potential for uncertainty and litigation  
 7 arising from the uncertainty; and

8 “(iii) how to develop and implement a  
 9 strategy to ensure the proper use of guid-  
 10 ance by the agency.

11 “(1) MAJOR RULE AND HIGH-IMPACT RULE FRAME-  
 12 WORKS.—

13 “(1) IN GENERAL.—Beginning on the date that  
 14 is 180 days after the date of enactment of this sub-  
 15 section, when an agency publishes in the Federal  
 16 Register—

17 “(A) a proposed major rule or a proposed  
 18 high-impact rule, the agency shall include a po-  
 19 tential framework for assessing the rule, which  
 20 shall include a general statement of how the  
 21 agency intends to measure the effectiveness of  
 22 the rule; or

23 “(B) a final major rule or a final high-im-  
 24 pact rule, the agency shall include a framework

1           for assessing the rule under paragraph (2),  
2           which shall include—

3                   “(i) a clear statement of the regu-  
4                   latory objectives of the rule, including a  
5                   summary of the benefit and cost of the  
6                   rule;

7                   “(ii) the methodology by which the  
8                   agency plans to analyze the rule, including  
9                   metrics by which the agency can meas-  
10                  ure—

11                          “(I) the effectiveness and bene-  
12                          fits of the rule in producing the regu-  
13                          latory objectives of the rule; and

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

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

24                   “(iv) a specific timeframe, as appro-  
25                   priate to the rule and not more than 10

1           years after the effective date of the rule,  
 2           under which the agency shall conduct the  
 3           assessment of the rule in accordance with  
 4           paragraph (2)(A).

5           “(2) ASSESSMENT.—

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

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

18                 “(ii) to determine whether—

19                         “(I) the rule is accomplishing the  
 20           regulatory objective of the rule;

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

24                                 “(aa) changes in the subject  
 25           area affected by the rule; and



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

4 “(AA) other rules; or  
 5 “(BB) to the extent  
 6 feasible, State and local gov-  
 7 ernment regulations;

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

11 “(IV) other alternatives to the  
 12 rule or modification of the rule could  
 13 better achieve the regulatory objective  
 14 while imposing a smaller burden on  
 15 society or increase cost-effectiveness,  
 16 taking into consideration any cost al-  
 17 ready incurred.

18 “(B) DIFFERENT METHODOLOGY.—If an  
 19 agency uses a methodology other than the  
 20 methodology under paragraph (1)(B)(ii) to as-  
 21 sess data under subparagraph (A), the agency  
 22 shall include as part of the notice required to  
 23 be published under subparagraph (D) an expla-  
 24 nation of the changes in circumstances that ne-  
 25 cessitated the use of that other methodology.

1 “(C) SUBSEQUENT ASSESSMENTS.—

2 “(i) IN GENERAL.—Except as pro-  
3 vided in clause (ii), if, after an assessment  
4 of a major rule or a high-impact rule  
5 under subparagraph (A), an agency deter-  
6 mines that the rule will remain in effect  
7 with or without modification, the agency  
8 shall—

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

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

23 “(ii) EXEMPTION.—The Adminis-  
24 trator may exempt an agency from con-  
25 ducting a subsequent assessment of a rule

1 under clause (i) if the Administrator deter-  
 2 mines that there is a foreseeable and ap-  
 3 parent need for the rule beyond the time-  
 4 frame required under clause (i)(I).

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

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

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

20 “(B) oversee the timely compliance of  
 21 agencies with this subsection;

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

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

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

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

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

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

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

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

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

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

7 “(5) APPLICABILITY.—

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

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

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

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

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

1 “(ii) interpretative rules, general  
 2 statements of policy, or rules of agency or-  
 3 ganization, procedure, or practice;

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

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

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

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

1 if the agency is prohibited from modifying or repeal-  
 2 ing the rule under another provision of law.

3 “(7) JUDICIAL REVIEW.—

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

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

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

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

21 “(C) EFFECTIVE DATE OF MAJOR RULE.—

22 If, in an action brought under subparagraph  
 23 (A)(i), a court determines that the agency did  
 24 not comply, the major rule or the high-impact

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

3 “(D) ADMINISTRATOR.—Any determina-  
 4 tion, action, or inaction of the Administrator  
 5 under this subsection shall not be subject to ju-  
 6 dicial review.”.

7 **SEC. 4. SCOPE OF REVIEW.**

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

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

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

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

17 (B) in paragraph (2)—

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

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



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

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

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

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

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

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

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

2 Section 701(b) of title 5, United States Code, is  
3 amended—

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

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

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

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

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

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

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

20 **SEC. 6. APPLICATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 “(notwithstanding subsections (a)(2), (g)(3), and (h)(2) of  
2 such section)”.

3 (k) NATIVE AMERICAN PROGRAMS ACT OF 1974.—

4 Section 814 of the Native American Programs Act of 1974  
5 (42 U.S.C. 2992b–1) is amended—

6 (1) in subsection (b)—

7 (A) by striking paragraph (1);

8 (B) by redesignating paragraphs (2) and  
9 (3) as paragraphs (1) and (2), respectively;

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

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

15 (ii) by striking “(other than an inter-  
16 pretative rule or a general statement of  
17 policy)”; and

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

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

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

25 (2) in subsection (c)—

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

4 (B) in the flush text following paragraph  
 5 (2), by striking “the first 2 sentences of section  
 6 553(b)” and inserting “section 553(c)”.

7 (l) NATURAL GAS POLICY ACT OF 1978.—Section  
 8 502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C.  
 9 3412(b)) is amended, in the third sentence, by striking  
 10 “section 553(d)(3)” and inserting “section 553(h)(2)”.

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

16 (n) POISON PREVENTION PACKAGING ACT OF  
 17 1970.—The Poison Prevention Packaging Act of 1970 (15  
 18 U.S.C. 1471 et seq.) is amended—

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

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

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

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

14       (q) SOCIAL SECURITY ACT.—The Social Security Act  
 15   (42 U.S.C. 301 et seq.) is amended—

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



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

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

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

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

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

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

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

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

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

1       (s) TITLE 41, UNITED STATES CODE.—Section  
2 8503(a)(2) of title 41, United States Code, is amended  
3 by striking “section 553(b) to (e)” and inserting “section  
4 553”.

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

11       (u) TOXIC SUBSTANCES CONTROL ACT.—Section  
12 19(c)(1)(B)(ii) of the Toxic Substances Control Act (15  
13 U.S.C. 2618(c)(1)(B)(ii)) is amended by striking “section  
14 553(c)” and inserting “section 553(f)(2)”.

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