115TH CONGRESS  
1ST SESSION

H. R. 5

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.
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

(b) TABLE OF CONTENTS.—The table of contents for 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.

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.
TITLE I—REGULATORY ACCOUNTABILITY ACT

SEC. 101. SHORT TITLE.
This title may be cited as the “Regulatory Accountability Act”.

SEC. 102. DEFINITIONS.
Section 551 of title 5, United States Code, is amended—

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

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

(3) by adding at the end the following:
“(15) ‘major rule’ means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose—
“(A) an annual cost on the economy of $100,000,000 or more, adjusted annually for inflation;

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

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

“(D) significant impacts on multiple sectors of the economy;

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

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

“(A) in one or more sectors of the economy that has a 6-digit code under the North Amer-
ican Industry Classification System, reduce em-
ployment not related to new regulatory compli-
ance by 1 percent or more annually during the
1-year, 5-year, or 10-year period after imple-
mentation;

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

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

“(D) in any industry area in which the Bu-
reau of Labor Statistics projects in the Occupa-
tional Employment Statistics program that the
employment level will decrease by 1 percent or more, further reduce employment not related to new regulatory compliance during the first year after implementation;

“(18) ‘guidance’ means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue;

“(19) ‘major guidance’ means guidance that the Administrator of the Office of Information and Regulatory Affairs finds is likely to lead to—

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

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

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

“(20) the ‘Information Quality Act’ means section 515 of Public Law 106–554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, and guidelines issued by the Administrator of the Office of Information and Regulatory Affairs or other agencies pursuant to the Act; and

“(21) the ‘Office of Information and Regulatory Affairs’ means the office established under section 3503 of chapter 35 of title 44 and any successor to that office.”.

SEC. 103. RULE MAKING.

(a) Section 553(a) of title 5, United States Code, is amended by striking “(a) This section applies” and inserting “(a) APPLICABILITY.—This section applies”.

(b) Section 553 of title 5, United States Code, is amended by striking subsections (b) through (e) and inserting the following:

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

“(1) The legal authority under which a rule may be proposed, including whether a rule making
is required by statute, and if so, whether by a specific date, or whether the agency has discretion to commence a rule making.

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

“(3) The specific nature and significance of the problem the agency may address with a rule (including the degree and nature of risks the problem poses and the priority of addressing those risks compared to other matters or activities within the agency’s jurisdiction), whether the problem warrants new agency action, and the countervailing risks that may be posed by alternatives for new agency action.

“(4) Whether existing rules have created or contributed to the problem the agency may address with a rule and whether those rules could be amended or rescinded to address the problem in whole or part.

“(5) Any reasonable alternatives for a new rule or other response identified by the agency or interested persons, including not only responses that mandate particular conduct or manners of compliance, but also—
“(A) the alternative of no Federal response;

“(B) amending or rescinding existing rules;

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

“(D) potential responses that—

“(i) specify performance objectives rather than conduct or manners of compliance;

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

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

“(iv) incorporate other innovative alternatives rather than agency actions that specify conduct or manners of compliance.

“(6) Notwithstanding any other provision of law—

“(A) the potential costs and benefits associated with potential alternative rules and other responses considered under section 553(b)(5), including direct, indirect, and cumulative costs and benefits and estimated impacts on jobs (in-
excluding an estimate of the net gain or loss in domestic jobs, wages, economic growth, innovation, economic competitiveness, and impacts on low income populations;

“(B) means to increase the cost-effectiveness of any Federal response; and

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

“(c) ADVANCE NOTICE OF PROPOSED RULE MAKING FOR MAJOR RULES, HIGH-ImpACT RULES, NEGATIVE-IMPACT ON JOBS AND WAGES RULES, AND RULES INVOLVING NOVEL LEGAL OR POLICY ISSUES.—In the case of a rule making for a major rule, a high-impact rule, a negative-impact on jobs and wages rule, or a rule that involves a novel legal or policy issue arising out of statutory mandates, not later than 90 days before a notice of proposed rule making is published in the Federal Register, an agency shall publish advance notice of proposed rule making in the Federal Register. In publishing such advance notice, the agency shall—

“(1) include a written statement identifying, at a minimum—
“(A) the nature and significance of the problem the agency may address with a rule, including data and other evidence and information on which the agency expects to rely for the proposed rule;

“(B) the legal authority under which a rule may be proposed, including whether a rule making is required by statute, and if so, whether by a specific date, or whether the agency has discretion to commence a rule making;

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

“(D) in the case of a rule that involves a novel legal or policy issue arising out of statutory mandates, the nature of and potential reasons to adopt the novel legal or policy position upon which the agency may base a proposed rule; and

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

“(2) solicit written data, views or argument from interested persons concerning the information and issues addressed in the advance notice; and
“(3) provide for a period of not fewer than 60 days for interested persons to submit such written data, views, or argument to the agency.

“(d) Notices of Proposed Rule Making; Determinations of Other Agency Course.—(1) Before it determines to propose a rule, and following completion of procedures under subsection (c), if applicable, the agency shall consult with the Administrator of the Office of Information and Regulatory Affairs. If the agency thereafter determines to propose a rule, the agency shall publish a notice of proposed rule making, which shall include—

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

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

“(C) the terms of the proposed rule;

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

“(i) a summary of information known to the agency concerning the considerations specified in subsection (b);

“(ii) a summary of additional information the agency provided to and obtained from interested persons under subsection (c);
“(iii) a summary of any preliminary risk assessment or regulatory impact analysis performed by the agency; and

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

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

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

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

“(F) a reasoned preliminary determination that the benefits of the proposed rule meet the relevant statutory objectives and justify the costs of the proposed rule (including all costs to be considered under subsection (b)(6)), based on the information described under subparagraph (D);

“(G) a discussion of—
“(i) the alternatives to the proposed rule, and other alternative responses, considered by the agency under subsection (b);

“(ii) the costs and benefits of those alternatives (including all costs to be considered under subsection (b)(6));

“(iii) whether those alternatives meet relevant statutory objectives; and

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

“(H)(i) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule; and

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

All information provided to or considered by the agency, and steps to obtain information by the agency, in connection with its determination to propose the rule, including any preliminary risk assessment or regulatory impact analysis prepared by the agency and all other information prepared or described by the agency under subparagraph (D) and, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, information provided by that Office in consultations with the agency, shall be placed in the docket for the proposed
rule and made accessible to the public by electronic means and otherwise for the public’s use when the notice of proposed rule making is published.

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

“(B) If in its determination of other agency course the agency makes a determination to amend or rescind an existing rule, the agency need not undertake additional proceedings under subsection (c) before it publishes a notice of proposed rule making to amend or rescind the existing rule.

All information provided to or considered by the agency, and steps to obtain information by the agency, in connection with its determination of other agency course, including but not limited to any preliminary risk assessment or regulatory impact analysis prepared by the agency and all other information that would be required to be prepared or described by the agency under paragraph (1)(D) if the
agency had determined to publish a notice of proposed rule
making and, at the discretion of the President or the Ad-
ministrator of the Office of Information and Regulatory
Affairs, information provided by that Office in consulta-
tions with the agency, shall be placed in the docket for
the determination and made accessible to the public by
electronic means and otherwise for the public’s use when
the notice of determination is published.

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

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

“(B) when other than under subsection (e) of
this section rules are required by statute or at the
discretion of the agency to be made on the record
after opportunity for an agency hearing, sections
556 and 557 shall apply, and paragraph (4), the re-
quirements of subsection (e) to receive comment out-
side of the procedures of sections 556 and 557, and
the petition procedures of subsection (e)(6) shall not apply.

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

“(4)(A) Within 30 days of publication of notice of proposed rule making, a member of the public may petition for a hearing in accordance with section 556 to determine whether any evidence or other information upon which the agency bases the proposed rule fails to comply with the Information Quality Act.

“(B)(i) The agency may, upon review of the petition, determine without further process to exclude from the rule making the evidence or other information that is the subject of the petition and, if appropriate, withdraw the proposed rule. The agency shall promptly publish any such determination.

“(ii) If the agency does not resolve the petition under the procedures of clause (i), it shall grant any such petition that presents a prima facie case that evidence or other information upon which the agency bases the proposed rule fails to comply with the Information Quality Act, hold the requested hearing not later than 30 days after receipt of the petition, provide a reasonable opportunity for cross-
examination at the hearing, and decide the issues presented by the petition not later than 60 days after receipt of the petition. The agency may deny any petition that it determines does not present such a prima facie case.

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

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

“(5) After notice or advance notice of a proposed rule making, the agency making the rule, and any person acting in an official capacity on behalf of the agency, may not communicate, and a person who receives Federal funds from the agency may not use those funds to communicate, through written, oral, electronic, or other means to the public about the proposed rule in a manner that—

“(A) directly advocates, in support of or against the proposed rule, for the submission of information to form part of the record of review for the proposed rule;
“(B) appeals to the public, or solicits a third-party, to undertake advocacy in support of or against the proposed rule; or

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

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

“(e) Hearings for High-Impact Rules.—Following notice of a proposed rule making, receipt of comments on the proposed rule, and any hearing held under subsection (d)(4), and before adoption of any high-impact rule, the agency shall hold a hearing in accordance with sections 556 and 557, unless such hearing is waived by all participants in the rule making other than the agency. The agency shall provide a reasonable opportunity for cross-examination at such hearing. The hearing shall be limited to the following issues of fact, except that participants at the hearing other than the agency may waive determination of any such issue:

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

“(2) Whether there is an alternative to the proposed rule that would achieve the relevant statutory
objectives at a lower cost (including all costs to be considered under subsection (b)(6)) than the proposed rule.

“(3) If there is more than one alternative to the proposed rule that would achieve the relevant statutory objectives at a lower cost than the proposed rule, which alternative would achieve the relevant statutory objectives at the lowest cost.

“(4) Whether, if the agency proposes to adopt a rule that is more costly than the least costly alternative that would achieve the relevant statutory objectives (including all costs to be considered under subsection (b)(6)), the additional benefits of the more costly rule exceed the additional costs of the more costly rule.

“(5) Whether the evidence and other information upon which the agency bases the proposed rule meets the requirements of the Information Quality Act.

“(6) Upon petition by an interested person who has participated in the rule making, other issues relevant to the rule making, unless the agency determines that consideration of the issues at the hearing would not advance consideration of the rule or would, in light of the nature of the need for agency
action, unreasonably delay completion of the rule making. An agency shall grant or deny a petition under this paragraph within 30 days of its receipt of the petition.

No later than 45 days before any hearing held under this subsection or sections 556 and 557, the agency shall publish in the Federal Register a notice specifying the proposed rule to be considered at such hearing, the issues to be considered at the hearing, and the time and place for such hearing, except that such notice may be issued not later than 15 days before a hearing held under subsection (d)(4)(B).

“(f) Final Rules.—(1) The agency shall adopt a rule only following consultation with the Administrator of the Office of Information and Regulatory Affairs to facilitate compliance with applicable rule making requirements.

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

“(3)(A) Except as provided in subparagraph (B), the agency shall adopt the least costly rule considered during the rule making (including all costs to be considered under subsection (b)(6)) that meets relevant statutory objectives.
“(B) The agency may adopt a rule that is more costly than the least costly alternative that would achieve the relevant statutory objectives only if the additional benefits of the more costly rule justify its additional costs and only if the agency explains its reason for doing so based on interests of public health, safety or welfare that are clearly within the scope of the statutory provision authorizing the rule.

“(4) When it adopts a final rule, the agency shall publish a notice of final rule making. The notice shall include—

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

“(B) the agency’s reasoned final determination of need for a rule to address the problem the agency seeks to address with the rule, including a statement of whether a rule is required by statute and a summary of any final risk assessment or regulatory impact analysis prepared by the agency;

“(C) the agency’s reasoned final determination that the benefits of the rule meet the relevant statutory objectives and justify the rule’s costs (including all costs to be considered under subsection (b)(6));

“(D) the agency’s reasoned final determination not to adopt any of the alternatives to the proposed
rule considered by the agency during the rule making, including—

“(i) the agency’s reasoned final determination that no alternative considered achieved the relevant statutory objectives with lower costs (including all costs to be considered under subsection (b)(6)) than the rule; or

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

“(E) the agency’s reasoned final determination—

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

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

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

“(II) whether and how the agency intends to amend or rescind the existing rule separate from adoption of the rule;
“(F) the agency’s reasoned final determination that the evidence and other information upon which the agency bases the rule complies with the Information Quality Act;

“(G) the agency’s reasoned final determination that the rule meets the objectives that the agency identified in subsection (d)(1)(E)(iii) or that other objectives are more appropriate in light of the full administrative record and the rule meets those objectives;

“(H) the agency’s reasoned final determination that it did not deviate from the metrics the agency included in subsection (d)(1)(E)(iii) or that other metrics are more appropriate in light of the full administrative record and the agency did not deviate from those metrics;

“(I)(i) for any major rule, high-impact rule, or negative-impact on jobs and wages rule, the agency’s plan for review of the rule no less than every ten years to determine whether, based upon evidence, there remains a need for the rule, whether the rule is in fact achieving statutory objectives, whether the rule’s benefits continue to justify its costs, and whether the rule can be modified or rescinded to re-
duce costs while continuing to achieve statutory ob-
jectives;

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

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

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

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

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

“(IV) a review by the Administrator of the
Office of Information and Regulatory Affairs of
the Office of Management and Budget when re-
quired under executive order; and

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

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

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

“(A) Subsections (c) through (e).

“(B) Paragraphs (1) through (3) of subsection
(f).
“(C) Subparagraphs (B) through (H) of subsection (f)(4).

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

“(B) If, following compliance with subparagraph (A) of this paragraph, the agency adopts an interim rule, it shall commence proceedings that comply fully with subsections (d) through (f) of this section immediately upon publication of the interim rule, shall treat the publication of the interim rule as publication of a notice of proposed rule making and shall not be required to issue supplemental notice other than to complete full compliance with subsection (d). No less than 270 days from publication of the interim rule (or 18 months in the case of a major rule or high-impact rule), the agency shall complete rule making under subsections (d) through (f) of this subsection and take final action to adopt a final rule or re-
scind the interim rule. If the agency fails to take timely final action, the interim rule will cease to have the effect of law.

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

“(3) When the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are unnecessary, including because agency rule making is undertaken only to correct a de minimis technical or clerical error in a previously issued rule or for other noncontroversial purposes, the agency may publish a rule without compliance with subsection (c), (d), (e), or (f)(1)–(3) and (f)(4)(B)–(F). If the agency receives significant adverse comment within 60 days after publication of the rule, it shall treat the notice of the rule as a notice
of proposed rule making and complete rule making in compliance with subsections (d) and (f).

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

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

“(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

“(2) interpretive rules and statements of policy;

or

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

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

“(k) RULE MAKING GUIDELINES.—(1)(A) The Administrator of the Office of Information and Regulatory Affairs shall establish guidelines for the assessment, in-
including quantitative and qualitative assessment, of the costs and benefits of proposed and final rules and other economic issues or issues related to risk that are relevant to rule making under this title. The rigor of cost-benefit analysis required by such guidelines shall be commensurate, in the Administrator’s determination, with the economic impact of the rule.

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

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

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

“(B) issue guidelines for the conduct of hearings under subsections 553(d)(4) and 553(e) of this section, including to assure a reasonable opportunity for cross-examination. Each agency shall adopt regulations for the conduct of hearings consistent with the guidelines issued under this subparagraph.

“(4) The Administrator of the Office of Information and Regulatory Affairs shall issue guidelines pursuant to the Information Quality Act to apply in rule making proceedings under sections 553, 556, and 557 of this title. In all cases, such guidelines, and the Administrator’s specific determinations regarding agency compliance with such guidelines, shall be entitled to judicial deference.

“(l) INCLUSION IN THE RECORD OF CERTAIN DOCUMENTS AND INFORMATION.—The agency shall include in the record for a rule making, and shall make available by
electronic means and otherwise, all documents and information prepared or considered by the agency during the proceeding, including, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, documents and information communicated by that Office during consultation with the Agency.

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

“(n) REGULATION-SPECIFIC FRAMEWORKS.—

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

“(A) whether the major rule is accomplishing its regulatory objective; and

“(B) whether the major rule has been rendered unnecessary, taking into consideration—
“(i) changes in the subject area affected by the major rule;

“(ii) whether the major rule overlaps, duplicates, or conflicts with other rules or, to the extent feasible, State and local government regulations; and

“(iii) other alternatives to the major rule or modification of the major rule that might achieve better results while imposing a smaller burden on society or at a lower cost, taking into consideration any cost already incurred.

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

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

“(B) consider modifications or alternatives that reduce costs and increase benefits to regulated entities or individuals.

“(3) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to affect any other provision of law that requires an agency to conduct retrospective reviews of rules issued by the agency.”.
SEC. 104. AGENCY GUIDANCE; PROCEDURES TO ISSUE
MAJOR GUIDANCE; PRESIDENTIAL AUTHORITY TO ISSUE GUIDELINES FOR ISSUANCE OF
GUIDANCE.

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

"§ 553a. Agency guidance; procedures to issue major guidance; authority to issue guidelines for issuance of guidance

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

“(1) make and document a reasoned determination that—

“(A) assures that such guidance is understandable and complies with relevant statutory objectives and regulatory provisions (including any statutory deadlines for agency action);

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

“(C) identifies the costs and benefits (including all costs to be considered during a rule making under section 553(b) of this title) of conduct conforming to such guidance and
assures that such benefits justify such costs; and

“(D) describes alternatives to such guidance and their costs and benefits (including all costs to be considered during a rule making under section 553(b) of this title) and explains why the agency rejected those alternatives; and

“(2) confer with the Administrator of the Office of Information and Regulatory Affairs on the issuance of such guidance to assure that the guidance is reasonable, understandable, consistent with relevant statutory and regulatory provisions and requirements or practices of other agencies, does not produce costs that are unjustified by the guidance’s benefits, and is otherwise appropriate.

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

“(b) Agency guidance—

“(1) is not legally binding and may not be relied upon by an agency as legal grounds for agency action;

“(2) shall state in a plain, prominent and permanent manner that it is not legally binding; and
“(3) shall, at the time it is issued or upon request, be made available by the issuing agency to interested persons and the public by electronic means and otherwise.

Agencies shall avoid the issuance of guidance that is inconsistent or incompatible with, or duplicative of, the agency’s governing statutes or regulations, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

“(c) The Administrator of the Office of Information and Regulatory Affairs shall have authority to issue guidelines for use by the agencies in the issuance of major guidance and other guidance. Such guidelines shall assure that each agency avoids issuing guidance documents that are inconsistent or incompatible with, or duplicative of, the law, its other regulations, or the regulations of other Federal agencies, drafts its guidance documents to be simple and easy to understand, and issues guidance in a manner sufficient to provide at least 90 days for affected entities to take steps to comply with such guidance, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended
by inserting after the item relating to section 553 the following new item:

“553a. Agency guidance; procedures to issue major guidance; 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.

Section 556 of title 5, United States Code, is amended by striking subsection (e) and inserting the following:

“(e)(1) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 and shall be made available to the parties and the public by electronic means and, upon payment of lawfully prescribed costs, otherwise. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

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

“(f) When an agency conducts rule making under this section and section 557 directly after concluding proceedings upon an advance notice of proposed rule making
under section 553(c), the matters to be considered and
determinations to be made shall include, among other rel-
evant matters and determinations, the matters and deter-
minations described in subsections (b) and (f) of section
553.

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

SEC. 106. ACTIONS REVIEWABLE.

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

(1) by striking “Agency action made” and in-
serting “(a) Agency action made”; and
(2) by adding at the end the following: “Denial by an agency of a correction request or, where administrative appeal is provided for, denial of an appeal, under an administrative mechanism described in subsection (b)(2)(B) of the Information Quality Act, or the failure of an agency within 90 days to grant or deny such request or appeal, shall be final action for purposes of this section.

“(b) Other than in cases involving interests of national security, notwithstanding subsection (a) of this section, upon the agency’s publication of an interim rule without compliance with section 553(c), (d), or (e) or requirements to render final determinations under subsection (f) of section 553, an interested party may seek immediate judicial review under this chapter of the agency’s determination to adopt such rule on an interim basis. Review shall be limited to whether the agency abused its discretion to adopt the interim rule without compliance with section 553(c), (d), or (e) or without rendering final determinations under subsection (f) of section 553.”.

SEC. 107. SCOPE OF REVIEW.

Section 706 of title 5, United States Code is amended—

(1) by striking “To the extent necessary” and inserting “(a) To the extent necessary”;
(2) in paragraph (2)(A) of subsection (b) (as designated by section 202 of this Act), by inserting after “in accordance with law” the following: “(including the Information Quality Act)”; and

(3) by adding at the end the following:

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

“(1) determination of the costs and benefits or other economic or risk assessment of the action, if the agency failed to conform to guidelines on such determinations and assessments established by the Administrator of the Office of Information and Regulatory Affairs under section 553(k);

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

“(3) guidance.

“(d) The court shall review agency denials of petitions under section 553(e)(6) or any other petition for a hearing under sections 556 and 557 for abuse of agency discretion.”.

SEC. 108. ADDED DEFINITION.

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

(1) in paragraph (1), by striking “and” at the end;
(2) in paragraph (2), by striking the period at the end, and inserting ‘‘; and’’; and
(3) by adding at the end the following:

“(3) ‘substantial evidence’ means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the record considered as a whole, taking into account whatever in the record fairly detracts from the weight of the evidence relied upon by the agency to support its decision.”.

SEC. 109. EFFECTIVE DATE.

The amendments made by this title to—
(1) sections 553, 556, and 704 of title 5, United States Code;
(2) subsection (b) of section 701 of such title;
(3) paragraphs (1) and (2) of section 706(c) of such title; and
(4) subsection (d) of section 706 of such title, shall not apply to any rule makings pending or completed on the date of enactment of this title.

SEC. 110. PROMPT ISSUANCE OF OIRA GUIDELINES.

The Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget shall establish any guideline required to be established by this title or the amendments made by this title.
TITLE II—SEPARATION OF POWERS RESTORATION ACT

SEC. 201. SHORT TITLE.

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

SEC. 202. JUDICIAL REVIEW OF STATUTORY AND REGULATORY INTERPRETATIONS.

Section 706 of title 5, United States Code, as amended by this Act, is further amended—

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

(A) by striking “decide all relevant questions of law, interpret constitutional and statutory provisions, and”; and

(B) by inserting after “of the terms of an agency action” the following “and decide de novo all relevant questions of law, including the interpretation of constitutional and statutory provisions, and rules made by agencies. If the reviewing court determines that a statutory or regulatory provision relevant to its decision contains a gap or ambiguity, the court shall not interpret that gap or ambiguity as an implicit del-
egation to the agency of legislative rule making
authority and shall not rely on such gap or am-
biguity as a justification either for interpreting
agency authority expansively or for deferring to
the agency’s interpretation on the question of
law. Notwithstanding any other provision of
law, this subsection shall apply in any action
for judicial review of agency action authorized
under any provision of law. No law may exempt
any such civil action from the application of
this section except by specific reference to this
section”; and
(2) by striking “The reviewing court shall—”
and inserting the following:
“(b) The reviewing court shall—”.

TITLE III—SMALL BUSINESS
REGULATORY FLEXIBILITY
IMPROVEMENTS ACT

SEC. 301. SHORT TITLE.

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

•HR 5 EH
SEC. 302. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

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

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

“(A) a rule pertaining to the protection of the rights of and benefits for veterans or part 232 of title 32 of the Code of Federal Regulations (as in effect on July 1, 2014) or any successor provisions thereto; or

“(B) a rule of particular (and not general) applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances.”.

(b) INCLUSION OF RULES WITH INDIRECT EFFECTS.—Section 601 of title 5, United States Code, is amended by adding at the end the following new paragraph:
“(9) Economic Impact.—The term ‘economic impact’ means, with respect to a proposed or final rule—

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

“(B) any indirect economic effect (including compliance costs and effects on revenue) on small entities which is reasonably foreseeable and results from such rule (without regard to whether small entities will be directly regulated by the rule).”.

(c) Inclusion of Rules With Beneficial Effects.—

(1) Initial Regulatory Flexibility Analysis.—Subsection (c) of section 603 of title 5, United States Code, is amended by striking the first sentence and inserting “Each initial regulatory flexibility analysis shall also contain a detailed description of alternatives to the proposed rule which minimize any adverse significant economic impact or maximize any beneficial significant economic impact on small entities.”.

(2) Final Regulatory Flexibility Analysis.—The first paragraph (6) of section 604(a) of title 5, United States Code, is amended by striking
“minimize the significant economic impact” and inserting “minimize the adverse significant economic impact or maximize the beneficial significant economic impact”.

(d) Inclusion of Rules Affecting Tribal Organizations.—Paragraph (5) of section 601 of title 5, United States Code, is amended by inserting “and tribal organizations (as defined in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l))),” after “special districts,”.

(e) Inclusion of Land Management Plans and Formal Rulemaking.—

(1) Initial Regulatory Flexibility Analysis.—Subsection (a) of section 603 of title 5, United States Code, is amended in the first sentence—

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

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

(2) Final Regulatory Flexibility Analysis.—Subsection (a) of section 604 of title 5, United States Code, is amended in the first sentence—
(A) by striking “or” after “proposed rule-
making,”; and

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

(3) LAND MANAGEMENT PLAN DEFINED.—Sec-
tion 601 of title 5, United States Code, is amended
by adding at the end the following new paragraph:
“(10) LAND MANAGEMENT PLAN.—
“(A) IN GENERAL.—The term ‘land man-
agement plan’ means—
“(i) any plan developed by the Sec-
retary of Agriculture under section 6 of
the Forest and Rangeland Renewable Re-
1604); and

“(ii) any plan developed by the Sec-
retary of the Interior under section 202 of
the Federal Land Policy and Management

“(B) REVISION.—The term ‘revision’
means any change to a land management plan
which—
“(i) in the case of a plan described in
subparagraph (A)(i), is made under section
6(f)(5) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(5)); or

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

“(C) AMENDMENT.—The term ‘amendment’ means any change to a land management plan which—

“(i) in the case of a plan described in subparagraph (A)(i), is made under section 6(f)(4) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1604(f)(4)) and with respect to which the Secretary of Agriculture prepares a statement described in section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)); or

“(ii) in the case of a plan described in subparagraph (A)(ii), is made under section 1610.5–5 of title 43, Code of Federal Regulations (or any successor regulation) and with respect to which the Secretary of
the Interior prepares a statement described
in section 102(2)(C) of the National Envi-
4332(2)(C)).”.

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

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

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

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

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

“(8) RECORDKEEPING REQUIREMENT.—The
term ‘recordkeeping requirement’ has the meaning
given such term in section 3502(13) of title 44.”.
(g) DEFINITION OF SMALL ORGANIZATION.—Paragraph (4) of section 601 of title 5, United States Code, is amended to read as follows:

“(4) SMALL ORGANIZATION.—

“(A) IN GENERAL.—The term ‘small organization’ means any not-for-profit enterprise which, as of the issuance of the notice of proposed rulemaking—

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

“(ii) in the case of any other enterprise, has a net worth that does not exceed $7 million and has not more than 500 employees.

“(B) LOCAL LABOR ORGANIZATIONS.—In the case of any local labor organization, subparagraph (A) shall be applied without regard
to any national or international organization of which such local labor organization is a part.

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

SEC. 303. EXPANSION OF REPORT OF REGULATORY AGEN- 
DA.

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

(1) in subsection (a)—

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

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

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

“(3) a brief description of the sector of the North American Industrial Classification System that is primarily affected by any rule which the
agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities; and”; and

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

“(c) Each agency shall prominently display a plain language summary of the information contained in the regulatory flexibility agenda published under subsection (a) on its website within 3 days of its publication in the Federal Register. The Office of Advocacy of the Small Business Administration shall compile and prominently display a plain language summary of the regulatory agendas referenced in subsection (a) for each agency on its website within 3 days of their publication in the Federal Register.”.

SEC. 304. REQUIREMENTS PROVIDING FOR MORE DETAILED ANALYSES.

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

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—

“(1) describing the reasons why action by the agency is being considered;
“(2) describing the objectives of, and legal basis for, the proposed rule;
“(3) estimating the number and type of small entities to which the proposed rule will apply;
“(4) describing the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report and record;
“(5) describing all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided;
“(6) estimating the additional cumulative economic impact of the proposed rule on small entities beyond that already imposed on the class of small entities by the agency or why such an estimate is not available;
“(7) describing any disproportionate economic impact on small entities or a specific class of small entities; and
“(8) describing any impairment of the ability of small entities to have access to credit.”.
(b) Final Regulatory Flexibility Analysis.—
(1) IN GENERAL.—Section 604(a) of title 5, United States Code, is amended—

(A) in paragraph (4), by striking “an explanation” and inserting “a detailed explanation”;

(B) in each of paragraphs (4), (5), and the first paragraph (6), by inserting “detailed” before “description”;

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

(D) in the second paragraph (6), by striking the period and inserting “; and”;

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

(F) by adding at the end the following:

“(8) a detailed description of any disproportionate economic impact on small entities or a specific class of small entities.”.

(2) INCLUSION OF RESPONSE TO COMMENTS ON CERTIFICATION OF PROPOSED RULE.—Paragraph (2) of section 604(a) of title 5, United States Code, is amended by inserting “(or certification of the proposed rule under section 605(b))” after “initial regulatory flexibility analysis”.

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

“(b) The agency shall make copies of the final regulatory flexibility analysis available to the public, including placement of the entire analysis on the agency’s website, and shall publish in the Federal Register the final regulatory flexibility analysis, or a summary thereof which includes the telephone number, mailing address, and link to the website where the complete analysis may be obtained.”.

(c) Cross-References to Other Analyses.—
Subsection (a) of section 605 of title 5, United States Code, is amended to read as follows:

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

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

(1) by inserting “detailed” before “statement” the first place it appears;
(2) by inserting “and legal” after “factual”;
and
(3) by inserting “The detailed statement shall include an economic assessment or a summary thereof that is sufficiently detailed to support the agency’s certification.” before “The agency shall provide such certification”.

e) Quantification Requirements.—Section 607 of title 5, United States Code, is amended to read as follows:

“§ 607. Quantification requirements
“In complying with sections 603 and 604, an agency shall provide—
“(1) a quantifiable or numerical description of the effects of the proposed or final rule and alternatives to the proposed or final rule; or
“(2) a more general descriptive statement and a detailed statement explaining why quantification is not practicable or reliable.”.

SEC. 305. REPEAL OF WAIVER AND DELAY AUTHORITY; ADDITIONAL POWERS OF THE CHIEF COUNSEL FOR ADVOCACY.

(a) In General.—Section 608 of title 5, United States Code, is amended to read as follows:
“§ 608. Additional powers of Chief Counsel for Advocacy

“(a)(1) Not later than 270 days after the date of the enactment of this section, the Chief Counsel for Advocacy of the Small Business Administration shall, after opportunity for notice and comment under section 553, issue rules governing agency compliance with this chapter. The Chief Counsel may modify or amend such rules after notice and comment under section 553. This chapter (other than this subsection) shall not apply with respect to the issuance, modification, and amendment of rules under this paragraph.

“(2) An agency shall not issue rules which supplement the rules issued under subsection (a) unless such agency has first consulted with the Chief Counsel for Advocacy to ensure that such supplemental rules comply with this chapter and the rules issued under paragraph (1).

“(b) Notwithstanding any other law, the Chief Counsel for Advocacy of the Small Business Administration may intervene in any agency adjudication (unless such agency is authorized to impose a fine or penalty under such adjudication), and may inform the agency of the impact that any decision on the record may have on small entities. The Chief Counsel shall not initiate an appeal with respect to any adjudication in which the Chief Counsel intervenes under this subsection.
“(c) The Chief Counsel for Advocacy may file comments in response to any agency notice requesting comment, regardless of whether the agency is required to file a general notice of proposed rulemaking under section 553.”.

(b) Conforming Amendments.—

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

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

(3) Section 611(a)(3) of such title is amended—

(A) by striking subparagraph (B); and

(B) by striking “(3)(A) A small entity” and inserting the following:

“(3) A small entity”.

SEC. 306. PROCEDURES FOR GATHERING COMMENTS.

Section 609 of title 5, United States Code, is amended by striking subsection (b) and all that follows through the end of the section and inserting the following:

“(b)(1) Prior to publication of any proposed rule described in subsection (e), an agency making such rule shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with—
“(A) all materials prepared or utilized by the agency in making the proposed rule, including the draft of the proposed rule; and

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

“(2) An agency shall not be required under paragraph (1) to provide the exact language of any draft if the rule—

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

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

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

“(1) identify small entities or representatives of small entities or a combination of both for the purpose of obtaining advice, input, and recommendations from those persons about the potential economic impacts of the proposed rule and the compliance of the agency with section 603; and
“(2) convene a review panel consisting of an employee from the Office of Advocacy of the Small Business Administration, an employee from the agency making the rule, and in the case of an agency other than an independent regulatory agency (as defined in section 3502(5) of title 44), an employee from the Office of Information and Regulatory Affairs of the Office of Management and Budget to review the materials and information provided to the Chief Counsel under subsection (b).

“(d)(1) Not later than 60 days after the review panel described in subsection (c)(2) is convened, the Chief Counsel for Advocacy of the Small Business Administration shall, after consultation with the members of such panel, submit a report to the agency and, in the case of an agency other than an independent regulatory agency (as defined in section 3502(5) of title 44), the Office of Information and Regulatory Affairs of the Office of Management and Budget.

“(2) Such report shall include an assessment of the economic impact of the proposed rule on small entities, including an assessment of the proposed rule’s impact on the cost that small entities pay for energy, an assessment of the proposed rule’s impact on startup costs for small entities, and a discussion of any alternatives that will min-
imize adverse significant economic impacts or maximize beneficial significant economic impacts on small entities.

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

“(e) A proposed rule is described by this subsection if the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, the head of the agency (or the delegatee of the head of the agency), or an independent regulatory agency determines that the proposed rule is likely to result in—

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

“(2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, tribal organizations, or geographic regions;

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

“(4) a significant economic impact on a substantial number of small entities.
“(f) Upon application by the agency, the Chief Counsel for Advocacy of the Small Business Administration may waive the requirements of subsections (b) through (e) if the Chief Counsel determines that compliance with the requirements of such subsections are impracticable, unnecessary, or contrary to the public interest.

“(g) A small entity or a representative of a small entity may submit a request that the agency provide a copy of the report prepared under subsection (d) and all materials and information provided to the Chief Counsel for Advocacy of the Small Business Administration under subsection (b). The agency receiving such request shall provide the report, materials and information to the requesting small entity or representative of a small entity not later than 10 business days after receiving such request, except that the agency shall not disclose any information that is prohibited from disclosure to the public pursuant to section 552(b) of this title.”.

SEC. 307. PERIODIC REVIEW OF RULES.

Section 610 of title 5, United States Code, is amended to read as follows:

“§ 610. Periodic review of rules

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

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

“(b) The plan shall provide for the review of all such
agency rules existing on the date of the enactment of this
section within 10 years of the date of publication of the
plan in the Federal Register and for review of rules adopt-
ed after the date of enactment of this section within 10
years after the publication of the final rule in the Federal
Register. If the head of the agency determines that com-
pletion of the review of existing rules is not feasible by
the established date, the head of the agency shall so certify
in a statement published in the Federal Register and may
extend the review for not longer than 2 years after publi-
cation of notice of extension in the Federal Register. Such certification and notice shall be sent to the Chief Counsel for Advocacy of the Small Business Administration and the Congress.

“(c) The plan shall include a section that details how an agency will conduct outreach to and meaningfully include small businesses (including small business concerns owned and controlled by women, small business concerns owned and controlled by veterans, and small business concerns owned and controlled by socially and economically disadvantaged individuals (as such terms are defined in the Small Business Act)) for the purposes of carrying out this section. The agency shall include in this section a plan for how the agency will contact small businesses and gather their input on existing agency rules.

“(d) Each agency shall annually submit a report regarding the results of its review pursuant to such plan to the Congress, the Chief Counsel for Advocacy of the Small Business Administration, and, in the case of agencies other than independent regulatory agencies (as defined in section 3502(5) of title 44) to the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget. Such report shall include the identification of any rule with respect to which the head of the agency made a determination described
in paragraph (5) or (6) of subsection (e) and a detailed explanation of the reasons for such determination.

“(e) In reviewing a rule pursuant to subsections (a) through (d), the agency shall amend or rescind the rule to minimize any adverse significant economic impact on a substantial number of small entities or disproportionate economic impact on a specific class of small entities, or maximize any beneficial significant economic impact of the rule on a substantial number of small entities to the greatest extent possible, consistent with the stated objectives of applicable statutes. In amending or rescinding the rule, the agency shall consider the following factors:

“(1) The continued need for the rule.

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

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

“(4) The complexity of the rule.

“(5) The extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State, territorial, and local rules.

“(6) The contribution of the rule to the cumulative economic impact of all Federal rules on the
class of small entities affected by the rule, unless the
head of the agency determines that such calculations
cannot be made and reports that determination in
the annual report required under subsection (d).

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

“(f) Each year, each agency shall publish in the Fed-
eral Register and on its website a list of rules to be re-
viewed pursuant to such plan. The agency shall include
in the publication a solicitation of public comments on any
further inclusions or exclusions of rules from the list, and
shall respond to such comments. Such publication shall
include a brief description of the rule, the reason why the
agency determined that it has a significant economic im-
pact on a substantial number of small entities (without
regard to whether it had prepared a final regulatory flexi-
bility analysis for the rule), and request comments from
the public, the Chief Counsel for Advocacy of the Small
Business Administration, and the Regulatory Enforce-
ment Ombudsman concerning the enforcement of the
rule.”.
SEC. 308. JUDICIAL REVIEW OF COMPLIANCE WITH THE REQUIREMENTS OF THE REGULATORY FLEXIBILITY ACT AVAILABLE AFTER PUBLICATION OF THE FINAL RULE.

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

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

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

(1) by striking “final agency action” and inserting “publication of the final rule”; and

(2) by inserting “, in the case of a rule for which the date of final agency action is the same date as the publication of the final rule,” after “except that”.

(d) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting before the first period “or agency compliance with section 601, 603, 604, 605(b), 609, or 610”.

•HR 5 EH
SEC. 309. JURISDICTION OF COURT OF APPEALS OVER RULES IMPLEMENTING THE REGULATORY FLEXIBILITY ACT.

(a) In General.—Section 2342 of title 28, United States Code, is amended—

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

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

(3) by inserting after paragraph (7) the following new paragraph:

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

(b) Conforming Amendments.—Paragraph (3) of section 2341 of title 28, United States Code, is amended—

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

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

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

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

(c) Authorization To Intervene and Comment on Agency Compliance With Administrative Proce-
DURE.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting “chapter 5, and chapter 7,” after “this chapter,”.

SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSINESS CONCERN SIZE STANDARDS BY CHIEF COUNSEL FOR ADVOCACY.

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

“(A) IN GENERAL.—In addition to the criteria specified in paragraph (1)—

“(i) the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for purposes of this Act or the Small Business Investment Act of 1958; and

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

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

“(iii) except in the case of a size standard prescribed by the Administrator,
is approved by the Chief Counsel for Advocacy.”.

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

(1) by inserting “or Chief Counsel for Advocacy, as appropriate” before “shall ensure”; and

(2) by inserting “or Chief Counsel for Advocacy” before the period at the end.

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

“(9) JUDICIAL REVIEW OF STANDARDS APPROVED BY CHIEF COUNSEL.—In the case of an action for judicial review of a rule which includes a definition or standard approved by the Chief Counsel for Advocacy under this subsection, the party seeking such review shall be entitled to join the Chief Counsel as a party in such action.”.

SEC. 311. CLERICAL AMENDMENTS.

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

(1) in paragraph (1)—
(A) by striking the semicolon at the end
and inserting a period; and

(B) by striking “(1) the term” and inserting the following:
“(1) AGENCY.—The term”; 

(2) in paragraph (3)—

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

(B) by striking “(3) the term” and inserting the following:
“(3) SMALL BUSINESS.—The term”; 

(3) in paragraph (5)—

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

(B) by striking “(5) the term” and inserting the following:
“(5) SMALL GOVERNMENTAL JURISDICTION.—
The term”; and

(4) in paragraph (6)—

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

(B) by striking “(6) the term” and inserting the following:
“(6) SMALL ENTITY.—The term”.

•HR 5 EH
(b) Incorporations by Reference and Certifications.—The heading of section 605 of title 5, United States Code, is amended to read as follows:

“§ 605. Incorporations by reference and certifications”.

(c) Table of Sections.—The table of sections for chapter 6 of title 5, United States Code, is amended as follows:

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

“605. Incorporations by reference and certifications.”.

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

“607. Quantification requirements.”.

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

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

(d) Other Clerical Amendments to Chapter 6.—Chapter 6 of title 5, United States Code, is amended in section 603(d)—

(1) by striking paragraph (2);

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

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

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

SEC. 312. AGENCY PREPARATION OF GUIDES.
Section 212(a)(5) the Small Business Regulatory En-
forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
amended to read as follows:
“(5) AGENCY PREPARATION OF GUIDES.—The
agency shall, in its sole discretion, taking into ac-
count the subject matter of the rule and the lan-
guage of relevant statutes, ensure that the guide is
written using sufficiently plain language likely to be
understood by affected small entities. Agencies may
prepare separate guides covering groups or classes of
similarly affected small entities and may cooperate
with associations of small entities to distribute such
guides. In developing guides, agencies shall solicit
input from affected small entities or associations of
affected small entities. An agency may prepare
guides and apply this section with respect to a rule
or a group of related rules.”.

SEC. 313. COMPTROLLER GENERAL REPORT.
Not later than 90 days after the date of enactment
of this title, the Comptroller General of the United States
shall complete and publish a study that examines whether the Chief Counsel for Advocacy of the Small Business Administration has the capacity and resources to carry out the duties of the Chief Counsel under this title and the amendments made by this title.

TITLE IV—REQUIRE EVALUATION BEFORE IMPLEMENTING EXECUTIVE WISHLISTS ACT

SEC. 401. SHORT TITLE.

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

SEC. 402. RELIEF PENDING REVIEW.

Section 705 of title 5, United States Code, is amended—

(1) by striking “When” and inserting the following:

“(a) IN GENERAL.—When”; and

(2) by adding at the end the following:

“(b) HIGH-IMPACT RULES.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘Administrator’ means the

Administrator of the Office of Information and
Regulatory Affairs of the Office of Management and Budget; and

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

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

“(3) RELIEF.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), an agency shall postpone the effective date of a high-impact rule of the agency until the final disposition of all actions seeking judicial review of the rule.

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

“(i) during any period explicitly provided for judicial review under the statute authorizing the making of the rule; or
“(ii) if no such period is explicitly pro-
vided for, during the 60-day period begin-
ing on the date on which the high-impact
rule is published in the Federal Register,
the high-impact rule may take effect as early as
the date on which the applicable period ends.

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

TITLE V—ALL ECONOMIC REGU-
LATIONS ARE TRANSPARENT
ACT

SEC. 501. SHORT TITLE.

This title may be cited as the “All Economic Regu-
lations are Transparent Act” or the “ALERT Act”.

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

(a) AMENDMENT.—Title 5, United States Code, is
amended by inserting after chapter 6, the following new
chapter:
CHAPTER 6A—OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATION OF INFORMATION RELATING TO RULES

\[\text{Sec. 651. Agency monthly submission to office of information and regulatory affairs.}\]

\[\text{Sec. 652. Office of information and regulatory affairs publications.}\]

\[\text{Sec. 653. Requirement for rules to appear in agency-specific monthly publication.}\]

\[\text{Sec. 654. Definitions.}\]

SEC. 651. AGENCY MONTHLY SUBMISSION TO OFFICE OF INFORMATION AND REGULATORY AFFAIRS.

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

"(1) For each rule that the agency expects to propose or finalize during the 12-month period following the month covered by the monthly submission:

"(A) A summary of the nature of the rule, including the regulation identifier number and the docket number for the rule.

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

"(i) any statutory or judicial deadline; and
“(ii) whether the legal basis restricts
or precludes the agency from conducting
an analysis of the costs or benefits of the
rule during the rule making, and if not,
whether the agency plans to conduct an
analysis of the costs or benefits of the rule
during the rule making.

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

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

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

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

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

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

“(i) less than $50,000,000;

“(ii) $50,000,000 or more but less
than $100,000,000;
“(iii) $100,000,000 or more but less than $500,000,000;

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

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

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

“(vii) $10,000,000,000 or more;

“(C) any estimate of the economic effects of the rule, including the imposition of unfunded mandates and any estimate of the net effect that the rule will have on the number of jobs in the United States, that was considered in drafting the rule, or, if no such estimate is available, a statement affirming that no information on the economic effects, including the effect on the number of jobs, of the rule has been considered; and

“(D) a list of all influential scientific information disseminated or expected to be disseminated by the agency relating to the rule, including any peer review plans for the information, including—
“(i) the date the information or peer review was or is expected to be received by the agency;

“(ii) the date the information or peer review was publically disclosed or is expected to be publically disclosed, and, if that date is altered in subsequent reports, a brief explanation for the change; and

“(iii) the Internet address of the information or peer review completed and disclosed or of where the information or peer review will be found, once completed and disclosed.

“SEC. 652. OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATIONS.

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

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

“(1) PUBLICATION IN THE FEDERAL REGISTER.—Not later than October 1 of each year, the
Administrator shall publish in the Federal Register the following, with respect to the previous year:

“(A) The information that the Administrator received from the head of each agency under section 651.

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

“(i) that was proposed by each agency, including, for each such rule, an indication of whether the issuing agency conducted an analysis of the costs or benefits of the rule; and

“(ii) that was finalized by each agency, including for each such rule an indication of whether—

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

“(II) the agency claimed an exemption from the procedures under section 553 pursuant to section 553(g)(2)(A); and

“(III) the rule was issued pursuant to a statutory mandate or the rule
making is committed to agency discretion by law.

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

“(i) repealed a rule;

“(ii) reduced the scope of a rule;

“(iii) reduced the cost of a rule; or

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

“(D) The total cost (without reducing the cost by any offsetting benefits) of all rules proposed or finalized, the total cost of any unfunded mandates imposed by all such rules, and the number of rules for which an estimate of the cost of the rule was not available.

“(2) Publication on the Internet.—Not later than October 1 of each year, the Administrator shall make publicly available on the Internet the following:

“(A) The analysis of the costs or benefits, if conducted, for each proposed rule or final rule issued by an agency for the previous year.
“(B) The docket number and regulation identifier number for each proposed or final rule issued by an agency for the previous year.

“(C) The number of rules and a list of each such rule reviewed by the Director of the Office of Management and Budget for the previous year, and the authority under which each such review was conducted.

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

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

“(F) The number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House of Representatives or the Senate under section 802.

“SEC. 653. REQUIREMENT FOR RULES TO APPEAR IN AGENCY-SPECIFIC MONTHLY PUBLICATION.

“(a) IN GENERAL.—Subject to subsection (b), a rule may not take effect until the information required to be made publicly available on the Internet regarding such
rule pursuant to section 652(a) has been so available for
not less than 6 months.

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

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

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

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

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

“(C) necessary for national security; or

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

“SEC. 654. DEFINITIONS.

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

(b) TECHNICAL AND CONFORMING AMENDMENT.—
The table of chapters for part I of title 5, United States
Code, is amended by inserting after the item relating to chapter 5, the following:

"6. The Analysis of Regulatory Functions ............................................. 601
6A. Office of Information and Regulatory Affairs Publication of Information Relating to Rules ............................................. 651".

(c) EFFECTIVE DATES.—

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

(2) CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING.—

(A) IN GENERAL.—Subsection (b) of section 652 of title 5, United States Code, as added by subsection (a), shall take effect on the date that is 60 days after the date of the enactment of this title.

(B) DEADLINE.—The first requirement to publish or make available, as the case may be, under subsection (b) of section 652 of title 5, United States Code, as added by subsection (a), shall be the first October 1 after the effective date of such subsection.
(C) FIRST PUBLICATION.—The requirement under section 652(b)(2)(A) of title 5, United States Code, as added by subsection (a), shall include for the first publication, any analysis of the costs or benefits conducted for a proposed or final rule, for the 10 years before the date of the enactment of this title.

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

TITLE VI—PROVIDING ACCOUNTABILITY THROUGH TRANSPARENCY ACT

SEC. 601. SHORT TITLE. This title may be cited as the “Providing Accountability Through Transparency Act”.

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

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

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

•HR 5 EH
(2) in subparagraph (H)(ii), by striking the period at the end and inserting “; and”; and

(3) by inserting after subparagraph (H) the following:

“(I) the internet address of a summary of not more than 100 words in length of the proposed rule, in plain language, that shall be posted on the internet website under section 206(d) of the E–Government Act of 2002 (44 U.S.C. 3501 note) (commonly known as regulations.gov).”.


Attest:

Clerk.
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.

115TH CONGRESS
1ST SESSION
H. R. 5