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[Report No. 115–208]

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

IN THE SENATE OF THE UNITED STATES

APRIL 26, 2017

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

FEBRUARY 14, 2018

Reported by Mr. JOHNSON, with an amendment

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

A BILL

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

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

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

5 **SECTION 1. SHORT TITLE.**

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

8 **SEC. 2. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SEC. 3. RULEMAKING.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(C) the text of the proposed rule;

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

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

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

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

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

18 “(ii) a discussion of—

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

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

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

5 “(2) ACCESSIBILITY.—

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

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

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

1 “(4) *PUBLIC COMMENT.*—

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

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

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

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

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

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

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

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

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

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

15 “(i) *the rule; and*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(2) ACCESSIBILITY.—All information provided
 22 to the agency under paragraph (1) shall be promptly
 23 placed in the docket and made accessible to the public.

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

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

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

8 “(ii) the public; and

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

12 “(4) *TIMETABLE.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 “(C) *REPORT REQUIRED.*—

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

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

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

18 “(II) be published—

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

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

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

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

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

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

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

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

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

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

4 “(i) *a description of the alternative re-*
 5 *sponse the agency has determined to adopt;*
 6 *and*

7 “(ii) *if the agency intends to issue a*
 8 *rule, any information required under sub-*
 9 *section (c).*

10 “(e) *PUBLIC HEARING FOR HIGH-IMPACT RULES AND*
 11 *CERTAIN MAJOR RULES.*—

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

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

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

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

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

3 “(I) the proposed rule is based on
4 conclusions with respect to 1 or more
5 specific scientific, technical, economic,
6 or other complex factual issues that are
7 genuinely disputed;

8 “(II) with respect to a rule that
9 the agency is required to reissue not
10 less frequently than once every 3 years,
11 the interested person submitting the pe-
12 tition could not have raised the dis-
13 puted factual issues described in sub-
14 clause (I) during the 5-year period
15 preceding the date on which the peti-
16 tion is submitted; and

17 “(III) the resolution of the dis-
18 puted factual issues described in sub-
19 clause (I) would likely have an effect
20 on—

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

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

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

7 “(I) findings by the agency that—

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

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

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

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

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

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

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

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

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

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

1 “(I) a hearing—

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

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

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

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

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

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

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

5 “(3) *HEARING REQUIREMENTS.—*

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

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

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

17 “(B) *PROCEDURES.—*

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

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

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

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

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

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

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

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

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

12 “(4) *JUDICIAL REVIEW.*—

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

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

23 “(f) *FINAL RULES.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(4) *ACCESSIBILITY.*—

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

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

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

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

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

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

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

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

15 “(g) *APPLICABILITY.—*

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

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

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

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

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

17 “(3) *EXCEPTIONS FOR GOOD CAUSE.—*

18 “(A) *FINDING OF GOOD CAUSE.—*

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

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

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

10 “(B) *DIRECT FINAL RULES.—*

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

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

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

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

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

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

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

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

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

22 *“(C) INTERIM FINAL RULES.—*

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

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

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

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

14 “(ii) *INTERIM PERIOD.—*

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

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

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

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

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

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

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

20 “(1) *for guidance; or*

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

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

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

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

7 “(j) *RULEMAKING GUIDELINES.—*

8 “(1) *ASSESSMENT OF RULES.—*

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

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

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

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

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

23 “(B) *AGENCY ANALYSIS OF RULES.—*

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

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

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

“(I) selecting studies and models;

“(II) evaluating and weighing evidence; and

“(III) conducting peer reviews.

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

“(2) **SIMPLIFICATION OF RULES.**—

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

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

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

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

13 “(3) *CONSISTENCY IN RULEMAKING.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(i) is reasonable;

14 “(ii) is understandable;

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

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

21 “(v) is otherwise appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(2) ASSESSMENT.—

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

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

20 “(ii) to determine whether—

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

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

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

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

6 “(AA) other rules; or

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

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

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

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

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

3 “(C) *SUBSEQUENT ASSESSMENTS.*—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 *“(5) APPLICABILITY.—*

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

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

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

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

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

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

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

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

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

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

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

3 “(7) *JUDICIAL REVIEW.*—

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

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

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

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

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

rule, as applicable, shall take effect notwithstanding any order issued by the court.

“(D) ADMINISTRATOR.—Any determination, action, or inaction of the Administrator under this subsection shall not be subject to judicial review.”.

SEC. 4. SCOPE OF REVIEW.

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

(1) in the first sentence of the matter preceding paragraph (1), by striking “To the extent necessary” and inserting “(a) IN GENERAL.—To the extent necessary”; and

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

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

(B) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by inserting “, or, when appropriate, remand a matter to an agency without setting aside,” after “set aside”; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 **SEC. 6. APPLICATION.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 *(1) in subsection (b)—*

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

12 *(B) in paragraph (2)—*

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

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

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

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

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

4 (2) in subsection (c)—

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

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

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

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

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

18 (4) in subsection (e)—

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

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

24 (5) in subsection (f)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[Report No. 115–208]

A BILL

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

FEBRUARY 14, 2018

Reported with an amendment