

115TH CONGRESS
1ST SESSION

H. R. 5

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.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Mr. GOODLATTE (for himself, Mr. PETERSON, Mr. CHABOT, Mr. MARINO, Mr. RATCLIFFE, and Mr. LUETKEMEYER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Oversight and Government Reform, and Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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

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

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

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

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 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.

TITLE II—SEPARATION OF POWERS RESTORATION ACT

Sec. 201. Short title.

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

TITLE III—SMALL BUSINESS REGULATORY FLEXIBILITY IMPROVEMENTS ACT

Sec. 301. Short title.

Sec. 302. Clarification and expansion of rules covered by the regulatory flexibility act.

Sec. 303. Expansion of report of regulatory agenda.

Sec. 304. Requirements providing for more detailed analyses.

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

Sec. 306. Procedures for gathering comments.

Sec. 307. Periodic review of rules.

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

Sec. 309. Jurisdiction of court of appeals over rules implementing the regulatory flexibility act.

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

Sec. 311. Clerical amendments.

Sec. 312. Agency preparation of guides.

Sec. 313. Comptroller general report.

TITLE IV—REQUIRE EVALUATION BEFORE IMPLEMENTING EXECUTIVE WISHLISTS ACT

Sec. 401. Short title.

Sec. 402. Relief pending review.

TITLE V—ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT

Sec. 501. Short title.

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

TITLE VI—PROVIDING ACCOUNTABILITY THROUGH
TRANSPARENCY ACT

Sec. 601. Short title.

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

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

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

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

6 **SEC. 102. DEFINITIONS.**

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

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

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

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

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

17 “(A) an annual cost on the economy of
18 \$100,000,000 or more, adjusted annually for
19 inflation;

20 “(B) a major increase in costs or prices for
21 consumers, individual industries, Federal,

1 State, local, or tribal government agencies, or
2 geographic regions;

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

8 “(D) significant impacts on multiple sec-
9 tors of the economy;

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

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

19 “(A) in one or more sectors of the economy
20 that has a 6-digit code under the North Amer-
21 ican Industry Classification System, reduce em-
22 ployment not related to new regulatory compli-
23 ance by 1 percent or more annually during the
24 1-year, 5-year, or 10-year period after imple-
25 mentation;

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

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

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

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

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

9 “(A) an annual cost on the economy of
10 \$100,000,000 or more, adjusted annually for
11 inflation;

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

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

21 “(D) significant impacts on multiple sec-
22 tors of the economy;

23 “(20) the ‘Information Quality Act’ means sec-
24 tion 515 of Public Law 106–554, the Treasury and
25 General Government Appropriations Act for Fiscal

1 Year 2001, and guidelines issued by the Adminis-
2 trator of the Office of Information and Regulatory
3 Affairs or other agencies pursuant to the Act; and

4 “(21) the ‘Office of Information and Regulatory
5 Affairs’ means the office established under section
6 3503 of chapter 35 of title 44 and any successor to
7 that office.”.

8 **SEC. 103. RULE MAKING.**

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

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

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

19 “(1) The legal authority under which a rule
20 may be proposed, including whether a rule making
21 is required by statute, and if so, whether by a spe-
22 cific date, or whether the agency has discretion to
23 commence a rule making.

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

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

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

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

22 “(A) the alternative of no Federal re-
23 sponse;

24 “(B) amending or rescinding existing
25 rules;

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

4 “(D) potential responses that—

5 “(i) specify performance objectives
6 rather than conduct or manners of compli-
7 ance;

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

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

12 “(iv) incorporate other innovative al-
13 ternatives rather than agency actions that
14 specify conduct or manners of compliance.

15 “(6) Notwithstanding any other provision of
16 law—

17 “(A) the potential costs and benefits asso-
18 ciated with potential alternative rules and other
19 responses considered under section 553(b)(5),
20 including direct, indirect, and cumulative costs
21 and benefits and estimated impacts on jobs (in-
22 cluding an estimate of the net gain or loss in
23 domestic jobs), wages, economic growth, innova-
24 tion, economic competitiveness, and impacts on
25 low income populations;

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

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

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

19 “(1) include a written statement identifying, at
20 a minimum—

21 “(A) the nature and significance of the
22 problem the agency may address with a rule, in-
23 cluding data and other evidence and informa-
24 tion on which the agency expects to rely for the
25 proposed rule;

1 “(B) the legal authority under which a rule
2 may be proposed, including whether a rule mak-
3 ing is required by statute, and if so, whether by
4 a specific date, or whether the agency has dis-
5 cretion to commence a rule making;

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

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

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

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

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

24 “(d) NOTICES OF PROPOSED RULE MAKING; DETER-
25 MINATIONS OF OTHER AGENCY COURSE.—(1) Before it

1 determines to propose a rule, and following completion of
2 procedures under subsection (c), if applicable, the agency
3 shall consult with the Administrator of the Office of Infor-
4 mation and Regulatory Affairs. If the agency thereafter
5 determines to propose a rule, the agency shall publish a
6 notice of proposed rule making, which shall include—

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

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

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

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

15 “(i) a summary of information known to
16 the agency concerning the considerations speci-
17 fied in subsection (b);

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

21 “(iii) a summary of any preliminary risk
22 assessment or regulatory impact analysis per-
23 formed by the agency; and

24 “(iv) information specifically identifying all
25 data, studies, models, and other evidence or in-

1 formation considered or used by the agency in
2 connection with its determination to propose
3 the rule;

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

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

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

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

18 “(G) a discussion of—

19 “(i) the alternatives to the proposed rule,
20 and other alternative responses, considered by
21 the agency under subsection (b);

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

1 “(iii) whether those alternatives meet rel-
2 evant statutory objectives; and

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

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

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

10 All information provided to or considered by the agency,
11 and steps to obtain information by the agency, in connec-
12 tion with its determination to propose the rule, including
13 any preliminary risk assessment or regulatory impact
14 analysis prepared by the agency and all other information
15 prepared or described by the agency under subparagraph
16 (D) and, at the discretion of the President or the Adminis-
17 trator of the Office of Information and Regulatory Affairs,
18 information provided by that Office in consultations with
19 the agency, shall be placed in the docket for the proposed
20 rule and made accessible to the public by electronic means
21 and otherwise for the public’s use when the notice of pro-
22 posed rule making is published.

23 “(2)(A) If the agency undertakes procedures under
24 subsection (c) and determines thereafter not to propose
25 a rule, the agency shall, following consultation with the

1 Office of Information and Regulatory Affairs, publish a
2 notice of determination of other agency course. A notice
3 of determination of other agency course shall include in-
4 formation required by paragraph (1)(D) to be included in
5 a notice of proposed rule making and a description of the
6 alternative response the agency determined to adopt.

7 “(B) If in its determination of other agency course
8 the agency makes a determination to amend or rescind
9 an existing rule, the agency need not undertake additional
10 proceedings under subsection (c) before it publishes a no-
11 tice of proposed rule making to amend or rescind the exist-
12 ing rule.

13 All information provided to or considered by the agency,
14 and steps to obtain information by the agency, in connec-
15 tion with its determination of other agency course, includ-
16 ing but not limited to any preliminary risk assessment or
17 regulatory impact analysis prepared by the agency and all
18 other information that would be required to be prepared
19 or described by the agency under paragraph (1)(D) if the
20 agency had determined to publish a notice of proposed rule
21 making and, at the discretion of the President or the Ad-
22 ministrator of the Office of Information and Regulatory
23 Affairs, information provided by that Office in consulta-
24 tions with the agency, shall be placed in the docket for
25 the determination and made accessible to the public by

1 electronic means and otherwise for the public’s use when
2 the notice of determination is published.

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

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

12 “(B) when other than under subsection (e) of
13 this section rules are required by statute or at the
14 discretion of the agency to be made on the record
15 after opportunity for an agency hearing, sections
16 556 and 557 shall apply, and paragraph (4), the re-
17 quirements of subsection (e) to receive comment out-
18 side of the procedures of sections 556 and 557, and
19 the petition procedures of subsection (e)(6) shall not
20 apply.

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

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

7 “(B)(i) The agency may, upon review of the petition,
8 determine without further process to exclude from the rule
9 making the evidence or other information that is the sub-
10 ject of the petition and, if appropriate, withdraw the pro-
11 posed rule. The agency shall promptly publish any such
12 determination.

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

24 “(C) There shall be no judicial review of the agency’s
25 disposition of issues considered and decided or determined

1 under subparagraph (B)(ii) until judicial review of the
2 agency's final action. There shall be no judicial review of
3 an agency's determination to withdraw a proposed rule
4 under subparagraph (B)(i) on the basis of the petition.

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

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

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

23 “(2) Whether there is an alternative to the pro-
24 posed rule that would achieve the relevant statutory
25 objectives at a lower cost (including all costs to be

1 considered under subsection (b)(6)) than the pro-
2 posed rule.

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

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

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

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

1 making. An agency shall grant or deny a petition
2 under this paragraph within 30 days of its receipt
3 of the petition.

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

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

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

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

24 “(B) The agency may adopt a rule that is more costly
25 than the least costly alternative that would achieve the rel-

1 evant statutory objectives only if the additional benefits
2 of the more costly rule justify its additional costs and only
3 if the agency explains its reason for doing so based on
4 interests of public health, safety or welfare that are clearly
5 within the scope of the statutory provision authorizing the
6 rule.

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

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

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

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

22 “(D) the agency’s reasoned final determination
23 not to adopt any of the alternatives to the proposed
24 rule considered by the agency during the rule mak-
25 ing, including—

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

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

9 “(E) the agency’s reasoned final determina-
10 tion—

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

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

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

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

23 “(F) the agency’s reasoned final determination
24 that the evidence and other information upon which

1 the agency bases the rule complies with the Informa-
2 tion Quality Act;

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

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

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

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

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

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

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

25 “(A) Subsections (c) through (e).

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

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

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

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

1 making under subsections (d) through (f) of this sub-
2 section and take final action to adopt a final rule or re-
3 scind the interim rule. If the agency fails to take timely
4 final action, the interim rule will cease to have the effect
5 of law.

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

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

1 nificant adverse comment within 60 days after publication
2 of the rule, it shall treat the notice of the rule as a notice
3 of proposed rule making and complete rule making in com-
4 pliance with subsections (d) and (f).

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

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

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

18 “(2) interpretive rules and statements of policy;

19 or

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

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

1 “(k) RULE MAKING GUIDELINES.—(1)(A) The Ad-
2 ministrator of the Office of Information and Regulatory
3 Affairs shall establish guidelines for the assessment, in-
4 cluding quantitative and qualitative assessment, of the
5 costs and benefits of proposed and final rules and other
6 economic issues or issues related to risk that are relevant
7 to rule making under this title. The rigor of cost-benefit
8 analysis required by such guidelines shall be commensu-
9 rate, in the Administrator’s determination, with the eco-
10 nomic impact of the rule.

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

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

1 and easy to understand, with the goal of minimizing the
2 potential for uncertainty and litigation arising from such
3 uncertainty.

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

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

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

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

1 “(l) INCLUSION IN THE RECORD OF CERTAIN DOCU-
2 MENTS AND INFORMATION.—The agency shall include in
3 the record for a rule making, and shall make available by
4 electronic means and otherwise, all documents and infor-
5 mation prepared or considered by the agency during the
6 proceeding, including, at the discretion of the President
7 or the Administrator of the Office of Information and Reg-
8 ulatory Affairs, documents and information communicated
9 by that Office during consultation with the Agency.

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

17 **SEC. 104. AGENCY GUIDANCE; PROCEDURES TO ISSUE**
18 **MAJOR GUIDANCE; PRESIDENTIAL AUTHOR-**
19 **ITY TO ISSUE GUIDELINES FOR ISSUANCE OF**
20 **GUIDANCE.**

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

1 **“§ 553a. Agency guidance; procedures to issue major**
2 **guidance; authority to issue guidelines**
3 **for issuance of guidance**

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

7 “(1) make and document a reasoned determina-
8 tion that—

9 “(A) assures that such guidance is under-
10 standable and complies with relevant statutory
11 objectives and regulatory provisions (including
12 any statutory deadlines for agency action);

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

15 “(C) identifies the costs and benefits (in-
16 cluding all costs to be considered during a rule
17 making under section 553(b) of this title) of
18 conduct conforming to such guidance and
19 assures that such benefits justify such costs;
20 and

21 “(D) describes alternatives to such guid-
22 ance and their costs and benefits (including all
23 costs to be considered during a rule making
24 under section 553(b) of this title) and explains
25 why the agency rejected those alternatives; and

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

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

13 “(b) Agency guidance—

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

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

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

23 Agencies shall avoid the issuance of guidance that is in-
24 consistent or incompatible with, or duplicative of, the
25 agency’s governing statutes or regulations, with the goal

1 of minimizing the potential for uncertainty and litigation
2 arising from such uncertainty.

3 “(c) The Administrator of the Office of Information
4 and Regulatory Affairs shall have authority to issue guide-
5 lines for use by the agencies in the issuance of major guid-
6 ance and other guidance. Such guidelines shall assure that
7 each agency avoids issuing guidance documents that are
8 inconsistent or incompatible with, or duplicative of, the
9 law, its other regulations, or the regulations of other Fed-
10 eral agencies and drafts its guidance documents to be sim-
11 ple and easy to understand, with the goal of minimizing
12 the potential for uncertainty and litigation arising from
13 such uncertainty.”.

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

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

18 **SEC. 105. HEARINGS; PRESIDING EMPLOYEES; POWERS AND**
19 **DUTIES; BURDEN OF PROOF; EVIDENCE;**
20 **RECORD AS BASIS OF DECISION.**

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

23 “(e)(1) The transcript of testimony and exhibits, to-
24 gether with all papers and requests filed in the proceeding,

1 constitutes the exclusive record for decision in accordance
2 with section 557 and shall be made available to the parties
3 and the public by electronic means and, upon payment of
4 lawfully prescribed costs, otherwise. When an agency deci-
5 sion rests on official notice of a material fact not appear-
6 ing in the evidence in the record, a party is entitled, on
7 timely request, to an opportunity to show the contrary.

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

13 “(f) When an agency conducts rule making under this
14 section and section 557 directly after concluding pro-
15 ceedings upon an advance notice of proposed rule making
16 under section 553(c), the matters to be considered and
17 determinations to be made shall include, among other rel-
18 evant matters and determinations, the matters and deter-
19 minations described in subsections (b) and (f) of section
20 553.

21 “(g) Upon receipt of a petition for a hearing under
22 this section, the agency shall grant the petition in the case
23 of any major rule, unless the agency reasonably deter-
24 mines that a hearing would not advance consideration of
25 the rule or would, in light of the need for agency action,

1 unreasonably delay completion of the rule making. The
2 agency shall publish its decision to grant or deny the peti-
3 tion when it renders the decision, including an explanation
4 of the grounds for decision. The information contained in
5 the petition shall in all cases be included in the adminis-
6 trative record. This subsection shall not apply to rule mak-
7 ings that concern monetary policy proposed or imple-
8 mented by the Board of Governors of the Federal Reserve
9 System or the Federal Open Market Committee.”.

10 **SEC. 106. ACTIONS REVIEWABLE.**

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

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

15 (2) by adding at the end the following: “Denial
16 by an agency of a correction request or, where ad-
17 ministrative appeal is provided for, denial of an ap-
18 peal, under an administrative mechanism described
19 in subsection (b)(2)(B) of the Information Quality
20 Act, or the failure of an agency within 90 days to
21 grant or deny such request or appeal, shall be final
22 action for purposes of this section.

23 “(b) Other than in cases involving interests of na-
24 tional security, notwithstanding subsection (a) of this sec-
25 tion, upon the agency’s publication of an interim rule with-

1 out compliance with section 553(c), (d), or (e) or require-
2 ments to render final determinations under subsection (f)
3 of section 553, an interested party may seek immediate
4 judicial review under this chapter of the agency’s deter-
5 mination to adopt such rule on an interim basis. Review
6 shall be limited to whether the agency abused its discre-
7 tion to adopt the interim rule without compliance with sec-
8 tion 553(c), (d), or (e) or without rendering final deter-
9 minations under subsection (f) of section 553.”.

10 **SEC. 107. SCOPE OF REVIEW.**

11 Section 706 of title 5, United States Code is amend-
12 ed—

13 (1) by striking “To the extent necessary” and
14 inserting “(a) To the extent necessary”;

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

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

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

21 “(1) determination of the costs and benefits or
22 other economic or risk assessment of the action, if
23 the agency failed to conform to guidelines on such
24 determinations and assessments established by the

1 Administrator of the Office of Information and Reg-
2 ulatory Affairs under section 553(k);

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

5 “(3) guidance.

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

10 **SEC. 108. ADDED DEFINITION.**

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

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

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

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

18 “(3) ‘substantial evidence’ means such relevant
19 evidence as a reasonable mind might accept as ade-
20 quate to support a conclusion in light of the record
21 considered as a whole, taking into account whatever
22 in the record fairly detracts from the weight of the
23 evidence relied upon by the agency to support its de-
24 cision.”.

1 **SEC. 109. EFFECTIVE DATE.**

2 The amendments made by this title to—

3 (1) sections 553, 556, and 704 of title 5,

4 United States Code;

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

6 (3) paragraphs (1) and (2) of section 706(c) of

7 such title; and

8 (4) subsection (d) of section 706 of such title,

9 shall not apply to any rule makings pending or completed

10 on the date of enactment of this title.

11 **TITLE II—SEPARATION OF**
 12 **POWERS RESTORATION ACT**

13 **SEC. 201. SHORT TITLE.**

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

16 **SEC. 202. JUDICIAL REVIEW OF STATUTORY AND REGU-**
 17 **LATORY INTERPRETATIONS.**

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

20 (1) in subsection (a) (as designated by section
 21 107 of this Act)—

22 (A) by striking “decide all relevant ques-
 23 tions of law, interpret constitutional and statu-
 24 tory provisions, and”; and

25 (B) by inserting after “of the terms of an
 26 agency action” the following “and decide de

1 novo all relevant questions of law, including the
 2 interpretation of constitutional and statutory
 3 provisions, and rules made by agencies. Not-
 4 withstanding any other provision of law, this
 5 subsection shall apply in any action for judicial
 6 review of agency action authorized under any
 7 provision of law. No law may exempt any such
 8 civil action from the application of this section
 9 except by specific reference to this section”; and
 10 (2) by striking “The reviewing court shall—”

11 and inserting the following:

12 “(b) The reviewing court shall—”.

13 **TITLE III—SMALL BUSINESS**
 14 **REGULATORY FLEXIBILITY**
 15 **IMPROVEMENTS ACT**

16 **SEC. 301. SHORT TITLE.**

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

19 **SEC. 302. CLARIFICATION AND EXPANSION OF RULES COV-**
 20 **ERED BY THE REGULATORY FLEXIBILITY**
 21 **ACT.**

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

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

4 “(A) a rule pertaining to the protection of
5 the rights of and benefits for veterans or part
6 232 of title 32 of the Code of Federal Regula-
7 tions (as in effect on July 1, 2014) or any suc-
8 cessor provisions thereto; or

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

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

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

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

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

7 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
8 FECTS.—

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

18 (2) FINAL REGULATORY FLEXIBILITY ANAL-
19 YSIS.—The first paragraph (6) of section 604(a) of
20 title 5, United States Code, is amended by striking
21 “minimize the significant economic impact” and in-
22 serting “minimize the adverse significant economic
23 impact or maximize the beneficial significant eco-
24 nomic impact”.

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

7 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
8 FORMAL RULEMAKING.—

9 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
10 YSIS.—Subsection (a) of section 603 of title 5,
11 United States Code, is amended in the first sen-
12 tence—

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

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

18 (2) FINAL REGULATORY FLEXIBILITY ANAL-
19 YSIS.—Subsection (a) of section 604 of title 5,
20 United States Code, is amended in the first sen-
21 tence—

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

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

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

7 “(10) LAND MANAGEMENT PLAN.—

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

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

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

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

22 “(i) in the case of a plan described in
23 subparagraph (A)(i), is made under section
24 6(f)(5) of the Forest and Rangeland Re-

1 newable Resources Planning Act of 1974
2 (16 U.S.C. 1604(f)(5)); or

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

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

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

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

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

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

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

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

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

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

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

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

4 “(4) SMALL ORGANIZATION.—

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

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

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

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

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

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

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

13 **DA.**

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

16 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

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

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

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

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

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

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

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

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

1 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—

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

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

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

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

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

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

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

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

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

5 **“§ 607. Quantification requirements**

6 “In complying with sections 603 and 604, an agency
7 shall provide—

8 “(1) a quantifiable or numerical description of
9 the effects of the proposed or final rule and alter-
10 natives to the proposed or final rule; or

11 “(2) a more general descriptive statement and
12 a detailed statement explaining why quantification is
13 not practicable or reliable.”.

14 **SEC. 305. REPEAL OF WAIVER AND DELAY AUTHORITY; AD-**
15 **DITIONAL POWERS OF THE CHIEF COUNSEL**
16 **FOR ADVOCACY.**

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

19 **“§ 608. Additional powers of Chief Counsel for Advo-**
20 **cacy**

21 “(a)(1) Not later than 270 days after the date of the
22 enactment of this section, the Chief Counsel for Advocacy
23 of the Small Business Administration shall, after oppor-
24 tunity for notice and comment under section 553, issue
25 rules governing agency compliance with this chapter. The

1 Chief Counsel may modify or amend such rules after no-
2 tice and comment under section 553. This chapter (other
3 than this subsection) shall not apply with respect to the
4 issuance, modification, and amendment of rules under this
5 paragraph.

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

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

20 “(c) The Chief Counsel for Advocacy may file com-
21 ments in response to any agency notice requesting com-
22 ment, regardless of whether the agency is required to file
23 a general notice of proposed rulemaking under section
24 553.”.

25 (b) CONFORMING AMENDMENTS.—

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

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

5 (3) Section 611(a)(3) of such title is amend-
6 ed—

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

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

9 and inserting the following:

10 “(3) A small entity”.

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

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

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

19 “(A) all materials prepared or utilized by the
20 agency in making the proposed rule, including the
21 draft of the proposed rule; and

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

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

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

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

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

12 “(1) identify small entities or representatives of
13 small entities or a combination of both for the pur-
14 pose of obtaining advice, input, and recommenda-
15 tions from those persons about the potential eco-
16 nomic impacts of the proposed rule and the compli-
17 ance of the agency with section 603; and

18 “(2) convene a review panel consisting of an
19 employee from the Office of Advocacy of the Small
20 Business Administration, an employee from the
21 agency making the rule, and in the case of an agen-
22 cy other than an independent regulatory agency (as
23 defined in section 3502(5) of title 44), an employee
24 from the Office of Information and Regulatory Af-
25 fairs of the Office of Management and Budget to re-

1 view the materials and information provided to the
2 Chief Counsel under subsection (b).

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

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

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

24 “(e) A proposed rule is described by this subsection
25 if the Administrator of the Office of Information and Reg-

1 ulatory Affairs of the Office of Management and Budget,
2 the head of the agency (or the delegatee of the head of
3 the agency), or an independent regulatory agency deter-
4 mines that the proposed rule is likely to result in—

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

7 “(2) a major increase in costs or prices for con-
8 sumers, individual industries, Federal, State, or local
9 governments, tribal organizations, or geographic re-
10 gions;

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

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

18 “(f) Upon application by the agency, the Chief Coun-
19 sel for Advocacy of the Small Business Administration
20 may waive the requirements of subsections (b) through (e)
21 if the Chief Counsel determines that compliance with the
22 requirements of such subsections are impracticable, un-
23 necessary, or contrary to the public interest.

24 “(g) A small entity or a representative of a small enti-
25 ty may submit a request that the agency provide a copy

1 of the report prepared under subsection (d) and all mate-
2 rials and information provided to the Chief Counsel for
3 Advocacy of the Small Business Administration under
4 subsection (b). The agency receiving such request shall
5 provide the report, materials and information to the re-
6 questing small entity or representative of a small entity
7 not later than 10 business days after receiving such re-
8 quest, except that the agency shall not disclose any infor-
9 mation that is prohibited from disclosure to the public
10 pursuant to section 552(b) of this title.”.

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

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

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

15 “(a) Not later than 180 days after the enactment of
16 this section, each agency shall publish in the Federal Reg-
17 ister and place on its website a plan for the periodic review
18 of rules issued by the agency which the head of the agency
19 determines have a significant economic impact on a sub-
20 stantial number of small entities. Such determination shall
21 be made without regard to whether the agency performed
22 an analysis under section 604. The purpose of the review
23 shall be to determine whether such rules should be contin-
24 ued without change, or should be amended or rescinded,
25 consistent with the stated objectives of applicable statutes,

1 to minimize any adverse significant economic impacts or
2 maximize any beneficial significant economic impacts on
3 a substantial number of small entities. Such plan may be
4 amended by the agency at any time by publishing the revi-
5 sion in the Federal Register and subsequently placing the
6 amended plan on the agency’s website.

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

22 “(c) The plan shall include a section that details how
23 an agency will conduct outreach to and meaningfully in-
24 clude small businesses (including small business concerns
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-
2 cerns owned and controlled by socially and economically
3 disadvantaged individuals (as such terms are defined in
4 the Small Business Act)) for the purposes of carrying out
5 this section. The agency shall include in this section a plan
6 for how the agency will contact small businesses and gath-
7 er their input on existing agency rules.

8 “(d) Each agency shall annually submit a report re-
9 garding the results of its review pursuant to such plan
10 to the Congress, the Chief Counsel for Advocacy of the
11 Small Business Administration, and, in the case of agen-
12 cies other than independent regulatory agencies (as de-
13 fined in section 3502(5) of title 44) to the Administrator
14 of the Office of Information and Regulatory Affairs of the
15 Office of Management and Budget. Such report shall in-
16 clude the identification of any rule with respect to which
17 the head of the agency made a determination described
18 in paragraph (5) or (6) of subsection (e) and a detailed
19 explanation of the reasons for such determination.

20 “(e) In reviewing a rule pursuant to subsections (a)
21 through (d), the agency shall amend or rescind the rule
22 to minimize any adverse significant economic impact on
23 a substantial number of small entities or disproportionate
24 economic impact on a specific class of small entities, or
25 maximize any beneficial significant economic impact of the

1 rule on a substantial number of small entities to the great-
2 est extent possible, consistent with the stated objectives
3 of applicable statutes. In amending or rescinding the rule,
4 the agency shall consider the following factors:

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

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

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

11 “(4) The complexity of the rule.

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

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

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

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

16 **SEC. 308. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
17 **QUIREMENTS OF THE REGULATORY FLEXI-**
18 **BILITY ACT AVAILABLE AFTER PUBLICATION**
19 **OF THE FINAL RULE.**

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

23 (b) JURISDICTION.—Paragraph (2) of such section is
24 amended by inserting “(or which would have such jurisdic-

1 tion if publication of the final rule constituted final agency
2 action)” after “provision of law,”.

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

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

7 (2) by inserting “, in the case of a rule for
8 which the date of final agency action is the same
9 date as the publication of the final rule,” after “ex-
10 cept that”.

11 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
12 CACY.—Subsection (b) of section 612 of title 5, United
13 States Code, is amended by inserting before the first pe-
14 riod “or agency compliance with section 601, 603, 604,
15 605(b), 609, or 610”.

16 **SEC. 309. JURISDICTION OF COURT OF APPEALS OVER**
17 **RULES IMPLEMENTING THE REGULATORY**
18 **FLEXIBILITY ACT.**

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

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

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

1 (3) by inserting after paragraph (7) the fol-
2 lowing new paragraph:

3 “(8) all final rules under section 608(a) of title
4 5.”.

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

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

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

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

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

16 (c) AUTHORIZATION TO INTERVENE AND COMMENT
17 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
18 DURE.—Subsection (b) of section 612 of title 5, United
19 States Code, is amended by inserting “chapter 5, and
20 chapter 7,” after “this chapter,”.

1 **SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
2 **NESS CONCERN SIZE STANDARDS BY CHIEF**
3 **COUNSEL FOR ADVOCACY.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 3(a)(2) of the Small Business Act (15 U.S.C.
6 632(a)(2)(A)) is amended to read as follows:

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

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

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

18 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
19 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
20 632(a)(2)(C)(iii)) is amended to read as follows:

21 “(iii) except in the case of a size
22 standard prescribed by the Administrator,
23 is approved by the Chief Counsel for Advo-
24 cacy.”.

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section
2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
3 amended—

4 (1) by inserting “or Chief Counsel for Advo-
5 cacy, as appropriate” before “shall ensure”; and

6 (2) by inserting “or Chief Counsel for Advo-
7 cacy” before the period at the end.

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

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

19 **SEC. 311. CLERICAL AMENDMENTS.**

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

22 (1) in paragraph (1)—

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

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

3 “(1) AGENCY.—The term”;

4 (2) in paragraph (3)—

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

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

9 “(3) SMALL BUSINESS.—The term”;

10 (3) in paragraph (5)—

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

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

15 “(5) SMALL GOVERNMENTAL JURISDICTION.—
16 The term”; and

17 (4) in paragraph (6)—

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

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

22 “(6) SMALL ENTITY.—The term”.

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

1 **“§ 605. Incorporations by reference and certifi-**
2 **cations”.**

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

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

“605. Incorporations by reference and certifications.”.

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

“607. Quantification requirements.”.

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

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

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

15 (1) by striking paragraph (2);

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

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

20 (4) by striking “(B) any” and inserting “(2)
21 any”; and

22 (5) by striking “(C) advice” and inserting “(3)
23 advice”.

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

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

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

19 **SEC. 313. COMPTROLLER GENERAL REPORT.**

20 Not later than 90 days after the date of enactment
21 of this title, the Comptroller General of the United States
22 shall complete and publish a study that examines whether
23 the Chief Counsel for Advocacy of the Small Business Ad-
24 ministration has the capacity and resources to carry out
25 the duties of the Chief Counsel under this title and the
26 amendments made by this title.

1 **TITLE IV—REQUIRE EVALUA-**
2 **TION BEFORE IMPLE-**
3 **MENTING EXECUTIVE**
4 **WISHLISTS ACT**

5 **SEC. 401. SHORT TITLE.**

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

9 **SEC. 402. RELIEF PENDING REVIEW.**

10 Section 705 of title 5, United States Code, is amend-
11 ed—

12 (1) by striking “When” and inserting the fol-
13 lowing:

14 “(a) IN GENERAL.—When”; and

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

16 “(b) HIGH-IMPACT RULES.—

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

18 “(A) the term ‘Administrator’ means the
19 Administrator of the Office of Information and
20 Regulatory Affairs of the Office of Management
21 and Budget; and

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

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

7 “(3) RELIEF.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), an agency shall postpone the
10 effective date of a high-impact rule of the agen-
11 cy until the final disposition of all actions seek-
12 ing judicial review of the rule.

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

17 “(i) during any period explicitly pro-
18 vided for judicial review under the statute
19 authorizing the making of the rule; or

20 “(ii) if no such period is explicitly pro-
21 vided for, during the 60-day period begin-
22 ning on the date on which the high-impact
23 rule is published in the Federal Register,
24 the high-impact rule may take effect as early as
25 the date on which the applicable period ends.

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

6 **TITLE V—ALL ECONOMIC REGU-**
 7 **LATIONS ARE TRANSPARENT**
 8 **ACT**

9 **SEC. 501. SHORT TITLE.**

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

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

15 (a) AMENDMENT.—Title 5, United States Code, is
 16 amended by inserting after chapter 6, the following new
 17 chapter:

18 **“CHAPTER 6A—OFFICE OF INFORMATION**
 19 **AND REGULATORY AFFAIRS PUBLICA-**
 20 **TION OF INFORMATION RELATING TO**
 21 **RULES**

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

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

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

“Sec. 654. Definitions.

1 **“SEC. 651. AGENCY MONTHLY SUBMISSION TO OFFICE OF**
2 **INFORMATION AND REGULATORY AFFAIRS.**

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

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

12 “(A) A summary of the nature of the rule,
13 including the regulation identifier number and
14 the docket number for the rule.

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

17 “(i) any statutory or judicial deadline;
18 and

19 “(ii) whether the legal basis restricts
20 or precludes the agency from conducting
21 an analysis of the costs or benefits of the
22 rule during the rule making, and if not,
23 whether the agency plans to conduct an
24 analysis of the costs or benefits of the rule
25 during the rule making.

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

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

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

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

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

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

16 “(i) less than \$50,000,000;

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

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

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

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

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

3 “(vii) \$10,000,000,000 or more; and

4 “(C) any estimate of the economic effects
5 of the rule, including the imposition of un-
6 funded mandates and any estimate of the net
7 effect that the rule will have on the number of
8 jobs in the United States, that was considered
9 in drafting the rule, or, if no such estimate is
10 available, a statement affirming that no infor-
11 mation on the economic effects, including the
12 effect on the number of jobs, of the rule has
13 been considered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 “(i) repealed a rule;

7 “(ii) reduced the scope of a rule;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(C) necessary for national security; or

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

16 **“SEC. 654. DEFINITIONS.**

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

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

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

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

3 (c) EFFECTIVE DATES.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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