

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**S. 1607**

To affirm the authority of the President to require independent regulatory agencies to comply with regulatory analysis requirements applicable to executive agencies, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. PORTMAN

Viz:

1 Strike all after the enacting clause and insert the fol-  
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Independent Agency  
5 Regulatory Analysis Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “Administrator” means the Ad-  
9 ministrator of the Office of Information and Regu-  
10 latory Affairs;

1           (2) the term “agency” has the meaning given  
2 that term in section 3502(1) of title 44, United  
3 States Code;

4           (3) the term “economically significant rule”  
5 means any rule that the Administrator determines is  
6 likely to—

7           (A) have an annual effect on the economy  
8 of \$100,000,000 or more; or

9           (B) adversely affect in a material way the  
10 economy, a sector of the economy, productivity,  
11 competition, jobs, the environment, public  
12 health or safety, or State, local, or tribal gov-  
13 ernments or communities;

14           (4) the term “independent regulatory agency”  
15 has the meaning given that term in section 3502(5)  
16 of title 44, United States Code; and

17           (5) the term “rule”—

18           (A) means a rule, as that term is defined  
19 in section 551 of title 5, United States Code;  
20 and

21           (B) does not include a rule of the Board  
22 of Governors of the Federal Reserve System or  
23 the Federal Open Market Committee relating to  
24 monetary policy.

1 **SEC. 3. REGULATORY ANALYSIS BY INDEPENDENT AGEN-**  
2 **CIES.**

3 (a) IN GENERAL.—The President may by Executive  
4 order require an independent regulatory agency, while  
5 maximizing net benefits and considering costs, to comply,  
6 to the extent permitted by law, with regulatory analysis  
7 requirements applicable to other agencies, including the  
8 requirements to—

9 (1) identify the problem that the agency intends  
10 to address by a new rule (including, where applica-  
11 ble, the failures of private markets or public institu-  
12 tions that warrant new agency action) and assess  
13 the significance of that problem;

14 (2) examine whether any existing rule (or other  
15 law) has created, or contributed to, the problem that  
16 a new rule is intended to correct and whether the ex-  
17 isting rule (or other law) should be modified to  
18 achieve the intended goal of the new rule more effec-  
19 tively;

20 (3) identify and assess available alternatives to  
21 direct regulation, including providing economic in-  
22 centives to encourage the desired behavior, or pro-  
23 viding information upon which choices can be made  
24 by the public;

25 (4) consider to the extent reasonable in setting  
26 regulatory priorities, the degree and nature of the

1 risks posed by various substances or activities within  
2 its jurisdiction;

3 (5) design its rules in the most cost-effective  
4 manner to achieve the regulatory objective and, in  
5 doing so, consider incentives for innovation, consist-  
6 ency, predictability, the costs of enforcement and  
7 compliance (to the Federal Government, regulated  
8 entities, and the public), flexibility, distributive im-  
9 pacts, and equity;

10 (6) assess the costs and the benefits of the in-  
11 tended rule and, recognizing some costs and benefits  
12 are difficult to quantify, propose or adopt a rule only  
13 upon a reasoned determination that the benefits of  
14 the rule justify its costs;

15 (7) base its rulemaking decisions on the best  
16 reasonably obtainable scientific, technical, economic,  
17 and other information concerning the need for, and  
18 consequences of, the intended rule;

19 (8) identify and assess alternative forms of reg-  
20 ulation and, to the extent feasible, specify perform-  
21 ance objectives, rather than specifying the behavior  
22 or manner of compliance that regulated entities  
23 must adopt;

24 (9) seek the views of appropriate State, local,  
25 and tribal officials before imposing regulatory re-

1        requirements that might significantly or uniquely af-  
2        fect State, local, or tribal governmental entities,  
3        whenever feasible;

4            (10) avoid rules that are inconsistent or incom-  
5        patible with, or duplicative of, other rules of the  
6        independent regulatory agency or other agencies;

7            (11) tailor rules to impose the least burden on  
8        society, including individuals, businesses of differing  
9        sizes, and other entities (including small commu-  
10       nities and governmental entities), consistent with  
11       achieving the regulatory objectives, and taking into  
12       account, among other factors, and to the extent  
13       practicable, the cost of cumulative rules;

14           (12) draft each rule to be simple and easy to  
15       understand, with the goal of minimizing the poten-  
16       tial for uncertainty and litigation arising from un-  
17       certainty; and

18           (13) periodically review its existing economically  
19       significant rules to determine whether any such rules  
20       should be modified, streamlined, expanded, or re-  
21       pealed so as to make the regulatory program of the  
22       agency more effective or less burdensome in achiev-  
23       ing the regulatory objectives.

24        (b) **ECONOMICALLY SIGNIFICANT RULES.**—

1           (1) IN GENERAL.—For any proposed or final  
2 rule identified by an independent regulatory agency  
3 as, or determined by the Administrator to be, an  
4 economically significant rule, the President may by  
5 Executive order require the independent regulatory  
6 agency to provide to the Administrator and publish  
7 with the proposed and final rule the following infor-  
8 mation, to the extent permitted by law:

9           (A) An assessment, including the under-  
10 lying analysis, of benefits anticipated from the  
11 rule together with, to the extent feasible, a  
12 quantification of those benefits.

13           (B) An assessment, including the under-  
14 lying analysis, of costs anticipated from the rule  
15 together with, to the extent feasible, a quan-  
16 tification of those costs.

17           (C) An assessment, including the under-  
18 lying analysis, of costs and benefits of poten-  
19 tially effective and reasonably feasible alter-  
20 natives to the rule, identified by the agencies or  
21 the public, including improving existing regula-  
22 tions and reasonably viable nonregulatory ac-  
23 tions, and an explanation of why the planned  
24 regulatory action is preferable to the identified  
25 potential alternatives.



1           (2) NONBINDING ASSESSMENT.—An Executive  
2           order issued under this Act may require that, not  
3           later than 90 days after the independent regulatory  
4           agency submits a proposed or final economically sig-  
5           nificant rule for review, the Administrator submit  
6           for inclusion in the rulemaking record the assess-  
7           ment of the Administrator of the extent to which the  
8           independent regulatory agency has complied with  
9           any of the regulatory analysis requirements made  
10          applicable by Executive order.

11          (3) DETERMINATION AND EXPLANATION BY  
12          INDEPENDENT AGENCY.—An Executive order issued  
13          under this Act may require that, if the Adminis-  
14          trator concludes under paragraph (2) that the inde-  
15          pendent regulatory agency did not comply with 1 or  
16          more requirements of the Executive order with re-  
17          spect to a proposed or final economically significant  
18          rule, the head of the independent regulatory agency  
19          that issued the economically significant rule shall in-  
20          clude with the final rule—

21                 (A) a determination that the rule complies  
22                 with the specified requirement or requirements  
23                 and an explanation of that determination; and

24                 (B) if applicable, an explanation why the  
25                 independent regulatory agency did not comply

1 with 1 or more of the specified requirements,  
2 based on the statutory provision authorizing the  
3 rule.

4 (4) FAILURE TO COMPLETE ASSESSMENT.—An  
5 Executive order issued under this Act may provide  
6 that, if the Administrator does not complete an as-  
7 sessment under paragraph (2) within 90 days after  
8 the independent regulatory agency submits a pro-  
9 posed or final economically significant rule for re-  
10 view—

11 (A) the independent regulatory agency  
12 shall be deemed to have met the requirement  
13 for review by the Administrator under para-  
14 graph (1); and

15 (B) the independent regulatory agency  
16 may publish the final economically significant  
17 rule without inclusion of an assessment in the  
18 rulemaking record.

19 **SEC. 4. LIMITATION ON JUDICIAL REVIEW.**

20 (a) IN GENERAL.—The compliance or noncompliance  
21 of an independent regulatory agency with the require-  
22 ments of an Executive order issued under this Act shall  
23 not be subject to judicial review.

24 (b) AGENCY RECORD.—When an action for judicial  
25 review of a rule promulgated by an independent regulatory

1 agency is instituted, any determination, analysis, or expla-  
2 nation produced by the independent regulatory agency,  
3 and any assessment produced by the Administrator, pur-  
4 suant to an Executive order issued under this Act, shall  
5 constitute part of the whole record of agency action in con-  
6 nection with the review.

7 (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
8 tion shall be construed to bar judicial review of any other  
9 impact statement or similar analysis required by any other  
10 provision of law if judicial review of such statement or  
11 analysis is otherwise permitted by law.

12 **SEC. 5. RULES OF CONSTRUCTION.**

13 Nothing in this Act shall be construed to—

14 (1) limit the authority of the President with re-  
15 spect to independent regulatory agencies under any  
16 other applicable law;

17 (2) limit, diminish, or otherwise affect the inde-  
18 pendence from the President of independent regu-  
19 latory agencies; or

20 (3) confer on the Administrator or the Presi-  
21 dent any authority to affect the decisionmaking or  
22 regulatory authority of independent regulatory agen-  
23 cies.