Purpose: In the nature of a substitute.


S. 951

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents, 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 follow-
2 ing:

3 SECTION 1. SHORT TITLE.

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

6 SEC. 2. DEFINITIONS.

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

9 (1) in paragraph (5), by striking “rule making” and insert-
10 ing “rulemaking”;
(2) in paragraph (6), by striking “rule making” and inserting “rulemaking”;

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

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

(5) by adding at the end the following:

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

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

“(B) sets forth a policy on a statutory, regulatory, or technical issue or an interpretation of a statutory or regulatory issue;

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

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

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

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

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

“(18) ‘major rule’ means any rule that the Administrator determines is likely to cause—

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

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

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

“(19) ‘Office of Information and Regulatory Affairs’ means the office established under section 3503 of title 44 and any successor to that office; and

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

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended—

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

(2) in subsection (a), by striking “(a) This section applies” and inserting “(a) APPLICABILITY— This section applies”; and

(3) by striking subsections (b) through (e) and inserting the following:
“(b) Rulemaking Considerations.—In a rulemaking, an agency shall consider, in addition to other applicable considerations, the following:

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

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

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

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

“(5) For any major rule or high-impact rule, unless prohibited by law, the potential costs and benefits associated with potential alternative rules and other responses considered under paragraph (4), including quantitative and qualitative analyses of—

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

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

“(e) NOTICE OF PROPOSED RULEMAKING.—

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

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

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

“(C) the text of the proposed rule;

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

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

“(i) a reasoned preliminary explanation regarding how—
“(I) the proposed rule meets the statutory objectives; and
“(II) the benefits of the proposed rule justify the costs; and
“(ii) a discussion of—
“(I) the costs and benefits of alternatives considered by the agency under subsection (b)(4);
“(II) whether the alternatives considered by the agency under subsection (b)(4) meet relevant statutory objectives; and
“(III) the reasons why the agency did not propose an alternative considered by the agency under subsection (b)(4).
“(2) ACCESSIBILITY.—
“(A) IN GENERAL.—Except as provided in subparagraph (B), not later than the date on which an agency publishes a notice of proposed rulemaking under paragraph (1), all studies, models, scientific literature, and other information developed or relied upon by the agency, and actions taken by the agency to obtain that information, in connection with the determina-
tion of the agency to propose the rule that is
the subject of the rulemaking shall be placed in
the docket for the proposed rule and made ac-
cessible to the public.

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

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

“(4) PUBLIC COMMENT.—

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

“(i) if a public hearing is convened under subsection (e), reasonable oppor-
tunity for oral presentation shall be pro-
vided at the public hearing as provided in subsection (e); and
“(i) when, other than as provided in subsection (e), a rule is required by statute to be made on the record after opportunity for an agency hearing—

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

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

“(B) Timeline.—An agency shall provide not less than 60 days, or, with respect to a proposed major rule or a proposed high-impact rule, not less than 90 days, for interested persons to submit written material, data, views, or arguments under subparagraph (A).

“(5) Change of Classification after Publication of Notice.—If, after an agency submits the notification and publishes the notice of proposed rulemaking required under paragraph (1), a proposed rule is determined to be a major rule or a high-impact rule, the agency shall—

“(A) publish a notice in the Federal Register with respect to the change of the classification of the rule; and
“(B) allow interested persons an additional opportunity of not less than 30 days to comment on—

“(i) the rule; and

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

“(6) Prohibition on certain communications.—

“(A) In general.—Except as provided in subparagraph (B), after an agency publishes a notice of proposed rulemaking required under paragraph (1), or after an agency publishes a notice of initiation of rulemaking under subsection (d)(1)(B), the agency, and any individual acting in an official capacity on behalf of the agency, may not communicate, and a person who receives Federal funds from the agency may not use those funds to communicate, through written, oral, electronic, or other means, to the public with respect to the proposed rule in a manner that—

“(i) directly advocates, in support of or against the proposed rule, for the submission of information that will form part of the record for the proposed rule;
“(ii) appeals to the public, or solicits a third party, to undertake advocacy in support of or against the proposed rule; or

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

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

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

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

“(A) establish an electronic docket for that rulemaking, which may have a physical counterpart; and

“(B) publish a notice of initiation of rulemaking in the Federal Register, which shall—
(i) briefly describe the subject and objectives of, and the problem to be solved by, the rule;

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

(iii) invite interested persons to propose alternatives and other ideas regarding how best to accomplish the objectives of the agency in the most effective manner; and

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

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

(3) APPLICABILITY.—With respect to the alternatives and other ideas proposed under paragraph (1)(B)(iii)—

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

(i) the agency receiving the alternatives and other ideas; and

(ii) the public; and
“(B) the agency receiving the alternatives and other ideas may respond to the alternatives and other ideas.

“(4) Timetable.—

“(A) In general.—With respect to a rulemaking for a major rule or a high-impact rule, the agency proposing the rule shall establish a timetable for the rulemaking that—

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

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

“(II) if, after reviewing comments submitted during the period described in subclause (I), the agency determines that the agency shall proceed to a rulemaking—

“(aa) the anticipated date on which the agency shall publish the notice required under sub-
section (c)(1) with respect to the rule; and

“(bb) the duration of the comment period required under subsection (c)(4), including the date on which that comment period shall end;

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

“(iii) shall be published in the electronic docket established under paragraph (1)(A) with respect to the rulemaking.

“(B) CONSIDERATION OF FACTORS.—In establishing the timetable required under subparagraph (A), an agency shall consider relevant factors, including—

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

“(ii) the resources available to the agency;

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

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

“(C) REPORT REQUIRED.—
“(i) IN GENERAL.—An agency that fails to meet the final completion date established under subparagraph (A)(ii) shall submit to Congress and the Director of the Office of Management and Budget a report regarding why the agency failed to meet the completion date.

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

“(I) include an amended timetable for the rulemaking; and

“(II) be published—

“(aa) in the Federal Register; and

“(bb) in the electronic docket established under paragraph (1)(A) with respect to the rulemaking.

“(D) CHANGES TO INTERMEDIATE DATES PUBLISHED IN ELECTRONIC DOCKET.—If an agency changes an intermediate completion date for an action of the agency established under subparagraph (A)(i), the agency shall publish,
in the electronic docket established under para-
graph (1)(A)—

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

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

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

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

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

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

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

“(i) a description of the alternative re-
sponse the agency has determined to
adopt; and
“(ii) if the agency intends to issue a rule, any information required under sub-
section (e).

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

“(1) Petition for public hearing.—

“(A) In general.—Before the date on which the comment period closes with respect to a proposed high-impact rule or a proposed major rule described in section 551(18)(A), an interested person may petition the agency that proposed the rule to hold a public hearing in according with this subsection.

“(B) Petition for public hearing for high-impact rules.—

“(i) Granting of petition.—Not later than 30 days after the date on which an agency receives a petition submitted under subparagraph (A) with respect to a high-impact rule, the agency shall grant the petition if the petition shows that—

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

“(II) with respect to a rule that the agency is required to reissue not less frequently than once every 3 years, the interested person submitting the petition could not have raised the disputed factual issues described in subclause (I) during the 5-year period preceding the date on which the petition is submitted; and

“(III) the resolution of the disputed factual issues described in subclause (I) would likely have an effect on—

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

“(bb) whether the proposed rule achieves the statutory purpose.

“(ii) Denial of petition.—If an agency denies a petition submitted under clause (i) in whole or in part, the agency shall include in the rulemaking record an
explanation for the denial sufficient for judicial review, including—

“(I) findings by the agency that—

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

“(bb) with respect to a rule that the agency is required to reissue not less frequently than once every 3 years, the interested person submitting the petition could have raised the disputed factual issues in the petition during the 5-year period preceding the date on which the petition is submitted; and

“(II) a reasoned determination by the agency that the factual issues raised by the petition, even if subject to genuine dispute and not subject to subclause (I)(bb), will not have an effect on—

“(aa) the costs and benefits of the proposed rule; or
“(bb) whether the proposed rule achieves the statutory purpose.

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

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

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

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

“(I) a hearing—

“(aa) would not advance the consideration of the proposed rule by the agency; or
“(bb) would, in light of the need for agency action, unreasonably delay completion of the rule-making; or

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

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

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

“(A) the proposed rule to be considered at the hearing; and
“(B) the factual issues to be considered at the hearing.

“(3) HEARING REQUIREMENTS.—

“(A) LIMITED NATURE OF HEARING.—A hearing held under this subsection shall be limited to—

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

“(ii) any other factual issues the resolution of which an agency, in the discretion of the agency, determines will advance consideration by the agency of the proposed rule.

“(B) PROCEDURES.—

“(i) BURDEN OF PROOF.—Except as otherwise provided by statute, a proponent of a rule has the burden of proof in a hearing held under this subsection.

“(ii) ADMISSION OF EVIDENCE.—In a hearing held under this subsection, any documentary or oral evidence may be received, except that an agency, as a matter of policy, shall provide for the exclusion of immaterial or unduly repetitious evidence.
“(iii) ADOPTION OF RULES GOV-
ERNING HEARINGS.—To govern a hearing
held under this subsection, each agency
shall adopt rules that provide for—

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

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

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

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

“(C) RECORD OF HEARING.—A transcript of testimony and exhibits, together with all papers and requests filed in the hearing, shall constitute the exclusive record for decision of the factual issues addressed in a hearing held under this subsection.

“(4) JUDICIAL REVIEW.—

“(A) IN GENERAL.—Failure to petition for a hearing under this subsection shall not preclude judicial review of any claim that could have been raised in the hearing petition or at the hearing.

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

“(f) FINAL RULES.—

“(1) EFFECTIVENESS OF MAJOR OR HIGH-ImpACT RULE.—

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

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

“(ii) meets relevant statutory objectives.

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

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

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

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

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

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

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

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

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

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

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

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

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

“(4) ACCESSIBILITY.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), not later than the date on which an agency publishes a notice of final rulemaking under paragraph (2), all studies, models, scientific literature, and other information developed or relied upon by the agency, and actions taken by the agency to obtain that information, in connection with the determination of the agency to finalize the rule that is the subject of the rulemaking shall be placed in the docket for the rule and made accessible to the public.

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

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

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

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

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

“(B) OPPORTUNITY FOR COMMENT.—If an agency delays the effective date of a rule under subparagraph (A), the agency shall give the public not less than 30 days to submit comments.

“(g) APPLICABILITY.—

“(1) PRIMACY OF CERTAIN RULEMAKING CONSIDERATIONS AND PROCEDURES IN OTHER FEDERAL LAWS.—

“(A) CONSIDERATIONS.—If a rulemaking is authorized under a Federal law that requires an agency to consider, or prohibits an agency from considering, a factor in a manner that is
inconsistent with, or that conflicts with, the requirements under this section, for the purposes of this section, the requirement or prohibition, as applicable, in that other Federal law shall apply to the agency in the rulemaking.

“(B) PROCEDURAL REQUIREMENTS.—If a rulemaking is authorized under a Federal law that requires an agency to follow or use, or prohibits an agency from following or using, a procedure in a manner that is duplicative of, or that conflicts with, a procedural requirement under this section, for the purposes of this section, the requirement or prohibition, as applicable, in that other Federal law shall apply to the agency in the rulemaking.

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

“(3) EXCEPTIONS FOR GOOD CAUSE.—

“(A) FINDING OF GOOD CAUSE.—

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

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

“(B) DIRECT FINAL RULES.—

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

“(I) publish in the Federal Register the text of the final rule, the brief statement required under subparagraph (A)(ii), and a notice of opportunity for public comment;
“(II) establish a comment period of not less than 30 days for any interested person to submit written material, data, views, or arguments with respect to the final rule; and

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

“(ii) EXCEPTION.—An agency that made a finding described in clause (i) may choose not to follow the requirements under that clause if the agency determines that following the requirements would not expedite the issuance of the final rule.

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

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

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

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

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

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

“(ii) INTERIM PERIOD.—

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

“(aa) rescind the interim rule;
“(bb) initiate rulemaking in accordance with subsections (e) through (f); or
“(cc) take final action to adopt a final rule.
“(II) NO FORCE OR EFFECT.—If, as of the end of the 180-day period described in subclause (I), an agency fails to take an action described in item (aa), (bb), or (cc) of that subclause, the interim final rule issued by the agency shall have no force or effect.
“(4) EXEMPTION FOR MONETARY POLICY.—This section shall not apply to a rulemaking or to guidance that concerns monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.
“(h) DATE OF PUBLICATION.—A final rule, a direct final rule described in subsection (g)(3)(B), or an interim final rule described in subsection (g)(3)(C) shall be published not later than 30 days (or, in the case of a major rule or a high-impact rule, not later than 60 days) before the effective date of the rule, except—
“(1) for guidance; or
“(2) as otherwise provided by an agency for good cause and as published with the rule.

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

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

“(2) on a continuing basis, invite interested persons to submit, by electronic means, suggestions for rules that warrant retrospective review and possible modification or repeal.

“(j) RULEMAKING GUIDELINES.—

“(1) ASSESSMENT OF RULES.—

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

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

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

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

“(B) AGENCY ANALYSIS OF RULES.—

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

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

“(I) selecting studies and models;

“(II) evaluating and weighing evidence; and

“(III) conducting peer reviews.

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

“(2) Simplification of rules.—

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

“(B) Requirements.—The guidelines issued by the Administrator under subparagraph (A) shall advise each agency to—

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

“(ii) draft the rules of the agency to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from the uncertainty.

“(3) Consistency in rulemaking.—

“(A) In general.—To promote consistency in rulemaking, the Administrator shall—

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

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

“(B) Agency Adoption of Regulations.—Each agency shall adopt regulations
for the conduct of hearings consistent with the
guidelines issued under this paragraph.

“(k) Agency Guidance; Procedures To Issue
Major Guidance; Authority To Issue Guidelines
for Issuance of Guidance.—

“(1) In General.—Agency guidance shall—

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

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

“(C) at the time the guidance is issued, or
upon request, be made available by the issuing
agency to interested persons and the public.
“(2) PROCEDURES TO ISSUE MAJOR GUIDANCE.—Before issuing any major guidance, an agency shall—

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

“(i) such guidance is understandable and complies with relevant statutory objectives and regulatory provisions; and

“(ii) identifies the costs and benefits, including all costs and benefits to be considered during a rulemaking under subsection (b), of requiring conduct conforming to such guidance and assures that such benefits justify such costs; and

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

“(i) is reasonable;

“(ii) is understandable;

“(iii) is consistent with relevant statutory and regulatory provisions and requirements or practices of other agencies;

“(iv) does not produce costs that are unjustified by the benefits of the major guidance; and
“(v) is otherwise appropriate.

“(3) ISSUANCE OF UPDATED GUIDANCE.—

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

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

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

“(ii) to draft the guidance documents of the agency to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from the uncertainty; and

“(iii) how to develop and implement a strategy to ensure the proper use of guidance by the agency.

“(l) MAJOR RULE AND HIGH-ImpACT RULE FRAMEWORKS.—

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

“(A) a proposed major rule or a proposed high-impact rule, the agency shall include a potential framework for assessing the rule, which shall include a general statement of how the agency intends to measure the effectiveness of the rule; or

“(B) a final major rule or a final high-impact rule, the agency shall include a framework for assessing the rule under paragraph (2), which shall include—

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

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

“(I) the effectiveness and benefits of the rule in producing the regulatory objectives of the rule; and
“(II) the impacts, including any costs, of the rule on regulated and other impacted entities;

“(iii) a plan for gathering data regarding the metrics described in clause (ii) on an ongoing basis, or at periodic times, including a method by which the agency will invite the public to participate in the review process and seek input from other agencies; and

“(iv) a specific timeframe, as appropriate to the rule and not more than 10 years after the effective date of the rule, under which the agency shall conduct the assessment of the rule in accordance with paragraph (2)(A).

“(2) ASSESSMENT.—

“(A) IN GENERAL.—Each agency shall assess the data collected under paragraph (1)(B)(iii), using the methodology set forth in paragraph (1)(B)(ii) or any other appropriate methodology developed after the issuance of a final major rule or a final high-impact rule to better determine whether the regulatory objective was achieved, with respect to the rule—
“(i) to analyze how the actual benefits and costs of the rule may have varied from those anticipated at the time the rule was issued; and

“(ii) to determine whether—

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

“(II) the rule has been rendered unnecessary, taking into consideration—

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

“(bb) whether the rule overlaps, duplicates, or conflicts with—

“(AA) other rules; or

“(BB) to the extent feasible, State and local government regulations;

“(III) the rule needs to be modified in order to accomplish the regulatory objective; and

“(IV) other alternatives to the rule or modification of the rule could better achieve the regulatory objective
while imposing a smaller burden on society or increase cost-effectiveness, taking into consideration any cost already incurred.

“(B) DIFFERENT METHODOLOGY.—If an agency uses a methodology other than the methodology under paragraph (1)(B)(ii) to assess data under subparagraph (A), the agency shall include as part of the notice required to be published under subparagraph (D) an explanation of the changes in circumstances that necessitated the use of that other methodology.

“(C) SUBSEQUENT ASSESSMENTS.—

“(i) IN GENERAL.—Except as provided in clause (ii), if, after an assessment of a major rule or a high-impact rule under subparagraph (A), an agency determines that the rule will remain in effect with or without modification, the agency shall—

“(I) determine a specific time, as appropriate to the rule and not more than 10 years after the date on which the agency completes the assessment, under which the agency shall conduct
another assessment of the rule in accordance with subparagraph (A); and

“(II) if the assessment conducted under subclause (I) does not result in a repeal of the rule, periodically assess the rule in accordance with subparagraph (A) to ensure that the rule continues to meet the regulatory objective.

“(ii) EXEMPTION.—The Administrator may exempt an agency from conducting a subsequent assessment of a rule under clause (i) if the Administrator determines that there is a foreseeable and apparent need for the rule beyond the time-frame required under clause (i)(I).

“(D) PUBLICATION.—Not later than 180 days after the date on which an agency completes an assessment of a major rule or a high-impact rule under subparagraph (A), the agency shall publish a notice of availability of the results of the assessment in the Federal Register, including the specific time for any subsequent assessment of the rule under subparagraph (C)(i), if applicable.
“(3) OIRA oversight.—The Administrator shall—

“(A) issue guidance for agencies regarding the development of the framework under paragraph (1) and the conduct of the assessments under paragraph (2)(A);

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

“(C) ensure that the results of each assessment conducted under paragraph (2)(A) are—

“(i) published promptly on a centralized Federal website; and

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

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

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

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

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

“(A) the authority of an agency to assess or modify a major rule or a high-impact rule of the agency earlier than the end of the time-frame specified for the rule under paragraph (1)(B)(iv); or

“(B) any other provision of law that requires an agency to conduct retrospective reviews of rules issued by the agency.

“(5) APPLICABILITY.—

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

“(i) a major rule or a high-impact rule of an agency—
“(I) that the Administrator reviewed before the date of enactment of this subsection;

“(II) for which the agency is required to conduct a retrospective review under any other provision of law that meets or exceeds the requirements of this subsection, as determined by the Administrator; or

“(III) for which the authorizing statute is subject to periodic reauthorization by Congress not less frequently than once every 10 years;

“(ii) interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice;

“(iii) routine and administrative rules; or


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

“(6) RECOMMENDATIONS TO CONGRESS.—If, under an assessment conducted under paragraph (2), an agency determines that a major rule or a high-impact rule should be modified or repealed, the agency may submit to Congress recommendations for legislation to amend applicable provisions of law if the agency is prohibited from modifying or repealing the rule under another provision of law.

“(7) JUDICIAL REVIEW.—

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

“(i) published the framework for assessment of a major rule or a high-impact rule in accordance with paragraph (1); or

“(ii) completed and published the required assessment of a major rule or a
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high-impact rule in accordance with subparagraphs (A) and (D) of paragraph (2).

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

“(C) EFFECTIVE DATE OF MAJOR RULE.—If, in an action brought under subparagraph (A)(i), a court determines that the agency did not comply, the major rule or the high-impact rule, as applicable, shall take effect notwithstanding any order issued by the court.

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

SEC. 4. SCOPE OF REVIEW.

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

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

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

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

(B) in paragraph (2)—

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

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

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

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

“(b) REVIEW OF ENTIRE RECORD; PREJUDICIAL
ERROR.—In making a determination under subsection (a),
the court shall review the whole record or those parts of
it cited by a party, and due account shall be taken of the
rule of prejudicial error.
“(c) Preclusion of Review.—The determination of whether a rule is a major rule within the meaning of subparagraphs (B) and (C) of section 551(18) shall not be subject to judicial review.

“(d) Review of Certain Guidance.—Agency guidance that does not interpret a statute or rule may be reviewed only under subsection (a)(2)(D).

“(e) Agency Interpretation of Rules.—The weight that a reviewing court gives an interpretation by an agency of a rule of that agency shall depend on the thoroughness evident in the consideration of the rule by the agency, the validity of the reasoning of the agency, and the consistency of the interpretation with earlier and later pronouncements.”.

SEC. 5. ADDED DEFINITIONS.

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

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

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following:

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

(4) by striking “subsection (a)(2)(B)” and inserting “subsection (a)(2)(B) or (D)”;

(5) by striking “subsection (a)(2)(C)” and inserting “subsection (a)(2)(C) or (D)”;
(4) in paragraph (3), as so redesignated, by striking the period at the end and inserting ‘‘; and’’; and

(5) by adding at the end the following:

“(4) ‘substantial evidence’ means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the record considered as a whole.”.

SEC. 6. APPLICATION.

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

SEC. 7. TECHNICAL AND CONFORMING AMENDMENTS.

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

(b) Defense Production Act of 1950.—Section 709(b)(1) of the Defense Production Act of 1950 (50 U.S.C. 4559(b)(1)) is amended by striking “for not less than 30 days, consistent with the requirements of section
53

1 553(b)” and inserting “in a manner consistent with the
2 requirements of section 553(e)”.
3
4 (c) ENDANGERED SPECIES ACT OF 1973.—Section
6 1533(b)(3)) is amended—
7
8 (1) in subparagraph (A), in the first sentence,
9 by striking “section 553(e)” and inserting “section
10 553(i)”; and
11
12 (2) in subparagraph (D)(i), in the first sen-
13 tence, by striking “section 553(e)” and inserting
14 “section 553(i)”.
15
16 (d) EXPEDITED FUNDS AVAILABILITY ACT.—Section
17 609(a) of the Expedited Funds Availability Act (12 U.S.C.
18 4008(a)) is amended, in the matter preceding paragraph
19 (1), by striking “section 553(e)” and inserting “section
20 553”.
21
22 (e) FEDERAL HAZARDOUS SUBSTANCES ACT.—Sec-
23 tion 3 of the Federal Hazardous Substances Act (15
24 U.S.C. 1262) is amended—
25
26 (1) in subsection (e)(1), by striking “(other
27 than clause (B) of the last sentence of subsection (b)
28 of such section) of title 5 of the United States Code”
29 and inserting “of title 5, United States Code, other
30 than subsection (g)(3) of such section,”; and
(2) in subsection (j), by striking “section 553(e)” and inserting “section 553(i)”.

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

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

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

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

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

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

and
(2) in section 685 (42 U.S.C. 13643), in the second sentence, by striking "(notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section)" and inserting "(notwithstanding subsections (a)(2), (g)(3), and (h)(2) of such section)".

(i) Marine Mammal Protection Act of 1972.—Section 109(d)(2) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1379(d)(2)) is amended, in the second sentence, by striking "subsection (d) of such section 553" and inserting "subsection (h) of such section 553".

(j) McKinney-Vento Homeless Assistance Act.—Section 433 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11387) is amended, in the second sentence, by striking "(notwithstanding subsections (a)(2), (b)(B), and (d)(3) of such section)" and inserting "(notwithstanding subsections (a)(2), (g)(3), and (h)(2) of such section)".

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

(1) in subsection (b)—

(A) in paragraph (1), by striking "Subparagraph (A) of the last sentence of section 553(b) of title 5, United States Code, shall not apply with respect to any interpretative rule or
general statement of policy” and inserting
“Section 553(e) of title 5, United States Code,
shall apply with respect to guidance”;

(B) in paragraph (2)—

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

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

(C) in paragraph (3), in the matter pre-
ceeding subparagraph (A)—

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

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

(2) in subsection (c)—

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

(i) by striking “section 553(d)” and
inserting “section 553(h)”; and
(ii) by striking “an interpretative rule) or general statement of policy” and inserting “guidance)”; and

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

(3) in subsection (d), by striking “an interpretative rule) and each general statement of policy” and inserting “guidance)”; and

(4) in subsection (e)—

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

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

(5) in subsection (f)—

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

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

(6) by adding at the end the following:

“(g) In this section, the term ‘guidance’ has the meaning given the term in section 551 of title 5, United States Code.”.
(l) **Natural Gas Policy Act of 1978.**—Section 502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3412(b)) is amended, in the third sentence, by striking “section 553(d)(3)” and inserting “section 553(h)(2)”. 

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


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

2. (2) in section 7(c)(2) (15 U.S.C. 1476(c)(2)), by striking “section 553(b)” and inserting “section 553(c)(4)”.

(o) **Poultry Products Inspection Act.**—Section 14(c) of the Poultry Products Inspection Act (21 U.S.C. 463(c)) is amended by striking “section 553(e) of title 5, United States Code” and inserting “section 553(e)(4) of title 5, United States Code,”.
(p) Rural Electrification Act of 1936.—Section 206(a)(1) of the Rural Electrification Act of 1936 (7 U.S.C. 927(a)(1)) is amended by striking “subsections (b) through (e)” and inserting “subsections (b) through (k)”.

(q) Social Security Act.—The Social Security Act (42 U.S.C. 301 et seq.) is amended—

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

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

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

(r) Title 5, United States Code.—Title 5, United States Code, is amended—
(1) in section 556(d), in the sixth sentence, by striking “rule making” and inserting “rulemaking”;

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

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

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

(5) in section 1103(b)(1), by striking “section 553(b)(1), (2), and (3)” and inserting “section 553(e)”;

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

(s) Title 41, United States Code.—Section 8503(a)(2) of title 41, United States Code, is amended by striking “section 553(b) to (e)” and inserting “section 553”.

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

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