

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—115th Cong., 1st Sess.

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 fol-
2 lowing:

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”
10 and inserting “rulemaking”;

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

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

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

7 (5) by adding at the end the following:

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

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

12 “(B) sets forth a policy on a statutory,
13 regulatory, or technical issue or an interpreta-
14 tion of a statutory or regulatory issue;

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

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

24 “(A) an annual effect on the economy of
25 \$100,000,000 or more, adjusted once every 5

1 years to reflect increases in the Consumer Price
2 Index for All Urban Consumers, as published
3 by the Bureau of Labor Statistics of the De-
4 partment of Labor;

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

9 “(C) significant adverse effects on competi-
10 tion, employment, investment, productivity, in-
11 novation, public health and safety, or the ability
12 of United States-based enterprises to compete
13 with foreign-based enterprises in domestic and
14 export markets;

15 “(18) ‘major rule’ means any rule that the Ad-
16 ministrator determines is likely to cause—

17 “(A) an annual effect on the economy of
18 \$100,000,000 or more, adjusted once every 5
19 years to reflect increases in the Consumer Price
20 Index for All Urban Consumers, as published
21 by the Bureau of Labor Statistics of the De-
22 partment of Labor;

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

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

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

9 “(19) ‘Office of Information and Regulatory Af-
10 fairs’ means the office established under section
11 3503 of title 44 and any successor to that office;
12 and

13 “(20) ‘Administrator’ means the Administrator
14 of the Office of Information and Regulatory Af-
15 fairs.”.

16 **SEC. 3. RULEMAKING.**

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

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

21 (2) in subsection (a), by striking “(a) This sec-
22 tion applies” and inserting “(a) APPLICABILITY—
23 This section applies”; and

24 (3) by striking subsections (b) through (e) and
25 inserting the following:

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

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

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

10 “(3) Whether existing Federal laws or rules
11 have created or contributed to the problem the agen-
12 cy may address with a rule and, if so, whether those
13 Federal laws or rules could be amended or rescinded
14 to address the problem in whole or in part.

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

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

25 “(A) the direct costs and benefits;

1 “(B) the nature and degree of risks ad-
2 dressed by the rule and the countervailing risks
3 that might be posed by agency action; and

4 “(C) to the extent practicable, the cumu-
5 lative and indirect costs and benefits.

6 “(c) NOTICE OF PROPOSED RULEMAKING.—

7 “(1) IN GENERAL.—If an agency determines
8 that the objectives of the agency require the agency
9 to issue a rule, the agency shall notify the Adminis-
10 trator and publish a notice of proposed rulemaking
11 in the Federal Register, which shall include—

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

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

16 “(C) the text of the proposed rule;

17 “(D) a summary of information known to
18 the agency concerning the considerations de-
19 scribed in subsection (b); and

20 “(E) where otherwise consistent with appli-
21 cable law, for any major rule or high-impact
22 rule—

23 “(i) a reasoned preliminary expla-
24 nation regarding how—

1 “(I) the proposed rule meets the
2 statutory objectives; and

3 “(II) the benefits of the proposed
4 rule justify the costs; and

5 “(ii) a discussion of—

6 “(I) the costs and benefits of al-
7 ternatives considered by the agency
8 under subsection (b)(4);

9 “(II) whether the alternatives
10 considered by the agency under sub-
11 section (b)(4) meet relevant statutory
12 objectives; and

13 “(III) the reasons why the agen-
14 cy did not propose an alternative con-
15 sidered by the agency under sub-
16 section (b)(4).

17 “(2) ACCESSIBILITY.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), not later than the date on
20 which an agency publishes a notice of proposed
21 rulemaking under paragraph (1), all studies,
22 models, scientific literature, and other informa-
23 tion developed or relied upon by the agency,
24 and actions taken by the agency to obtain that
25 information, in connection with the determina-

1 tion of the agency to propose the rule that is
2 the subject of the rulemaking shall be placed in
3 the docket for the proposed rule and made ac-
4 cessible to the public.

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

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

13 “(4) PUBLIC COMMENT.—

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

21 “(i) if a public hearing is convened
22 under subsection (e), reasonable oppor-
23 tunity for oral presentation shall be pro-
24 vided at the public hearing as provided in
25 subsection (e); and

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

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

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

9 “(B) TIMELINE.—An agency shall provide
10 not less than 60 days, or, with respect to a pro-
11 posed major rule or a proposed high-impact
12 rule, not less than 90 days, for interested per-
13 sons to submit written material, data, views, or
14 arguments under subparagraph (A).

15 “(5) CHANGE OF CLASSIFICATION AFTER PUB-
16 LICATION OF NOTICE.—If, after an agency submits
17 the notification and publishes the notice of proposed
18 rulemaking required under paragraph (1), a pro-
19 posed rule is determined to be a major rule or a
20 high-impact rule, the agency shall—

21 “(A) publish a notice in the Federal Reg-
22 ister with respect to the change of the classi-
23 fication of the rule; and

1 “(B) allow interested persons an additional
2 opportunity of not less than 30 days to com-
3 ment on—

4 “(i) the rule; and

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

7 “(6) PROHIBITION ON CERTAIN COMMUNICA-
8 TIONS.—

9 “(A) IN GENERAL.—Except as provided in
10 subparagraph (B), after an agency publishes a
11 notice of proposed rulemaking required under
12 paragraph (1), or after an agency publishes a
13 notice of initiation of rulemaking under sub-
14 section (d)(1)(B), the agency, and any indi-
15 vidual acting in an official capacity on behalf of
16 the agency, may not communicate, and a person
17 who receives Federal funds from the agency
18 may not use those funds to communicate,
19 through written, oral, electronic, or other
20 means, to the public with respect to the pro-
21 posed rule in a manner that—

22 “(i) directly advocates, in support of
23 or against the proposed rule, for the sub-
24 mission of information that will form part
25 of the record for the proposed rule;

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

4 “(iii) is directly or indirectly for the
5 purpose of publicity or propaganda within
6 the United States in a manner that Con-
7 gress has not authorized.

8 “(B) EXCEPTION.—The prohibition under
9 subparagraph (A) shall not apply to a commu-
10 nication that requests comments on, or provides
11 information regarding, a proposed rule in an
12 impartial manner.

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

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

19 “(A) establish an electronic docket for that
20 rulemaking, which may have a physical counter-
21 part; and

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

1 “(i) briefly describe the subject and
2 objectives of, and the problem to be solved
3 by, the rule;

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

6 “(iii) invite interested persons to pro-
7 pose alternatives and other ideas regarding
8 how best to accomplish the objectives of
9 the agency in the most effective manner;
10 and

11 “(iv) indicate how interested persons
12 may submit written material for the dock-
13 et.

14 “(2) ACCESSIBILITY.—All information provided
15 to the agency under paragraph (1) shall be promptly
16 placed in the docket and made accessible to the pub-
17 lic.

18 “(3) APPLICABILITY.—With respect to the al-
19 ternatives and other ideas proposed under paragraph
20 (1)(B)(iii)—

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

23 “(i) the agency receiving the alter-
24 natives and other ideas; and

25 “(ii) the public; and

1 “(B) the agency receiving the alternatives
2 and other ideas may respond to the alternatives
3 and other ideas.

4 “(4) TIMETABLE.—

5 “(A) IN GENERAL.—With respect to a
6 rulemaking for a major rule or a high-impact
7 rule, the agency proposing the rule shall estab-
8 lish a timetable for the rulemaking that—

9 “(i) contains intermediate completion
10 dates for actions of the agency, includ-
11 ing—

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

17 “(II) if, after reviewing com-
18 ments submitted during the period de-
19 scribed in subclause (I), the agency
20 determines that the agency shall pro-
21 ceed to a rulemaking—

22 “(aa) the anticipated date
23 on which the agency shall publish
24 the notice required under sub-

1 section (c)(1) with respect to the
2 rule; and

3 “(bb) the duration of the
4 comment period required under
5 subsection (c)(4), including the
6 date on which that comment pe-
7 riod shall end;

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

10 “(iii) shall be published in the elec-
11 tronic docket established under paragraph
12 (1)(A) with respect to the rulemaking.

13 “(B) CONSIDERATION OF FACTORS.—In
14 establishing the timetable required under sub-
15 paragraph (A), an agency shall consider rel-
16 evant factors, including—

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

19 “(ii) the resources available to the
20 agency;

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

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

25 “(C) REPORT REQUIRED.—

1 “(i) IN GENERAL.—An agency that
2 fails to meet the final completion date es-
3 tablished under subparagraph (A)(ii) shall
4 submit to Congress and the Director of the
5 Office of Management and Budget a report
6 regarding why the agency failed to meet
7 the completion date.

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

11 “(I) include an amended time-
12 table for the rulemaking; and

13 “(II) be published—

14 “(aa) in the Federal Reg-
15 ister; and

16 “(bb) in the electronic dock-
17 et established under paragraph
18 (1)(A) with respect to the rule-
19 making.

20 “(D) CHANGES TO INTERMEDIATE DATES
21 PUBLISHED IN ELECTRONIC DOCKET.—If an
22 agency changes an intermediate completion date
23 for an action of the agency established under
24 subparagraph (A)(i), the agency shall publish,

1 in the electronic docket established under para-
2 graph (1)(A)—

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

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

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

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

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

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

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

23 “(i) a description of the alternative re-
24 sponse the agency has determined to
25 adopt; and

1 “(ii) if the agency intends to issue a
2 rule, any information required under sub-
3 section (c).

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

6 “(1) PETITION FOR PUBLIC HEARING.—

7 “(A) IN GENERAL.—Before the date on
8 which the comment period closes with respect to
9 a proposed high-impact rule or a proposed
10 major rule described in section 551(18)(A), an
11 interested person may petition the agency that
12 proposed the rule to hold a public hearing in ac-
13 cordance with this subsection.

14 “(B) PETITION FOR PUBLIC HEARING FOR
15 HIGH-IMPACT RULES.—

16 “(i) GRANTING OF PETITION.—Not
17 later than 30 days after the date on which
18 an agency receives a petition submitted
19 under subparagraph (A) with respect to a
20 high-impact rule, the agency shall grant
21 the petition if the petition shows that—

22 “(I) the proposed rule is based
23 on conclusions with respect to 1 or
24 more specific scientific, technical, eco-

1 nomic, or other complex factual issues
2 that are genuinely disputed;

3 “(II) with respect to a rule that
4 the agency is required to reissue not
5 less frequently than once every 3
6 years, the interested person submit-
7 ting the petition could not have raised
8 the disputed factual issues described
9 in subclause (I) during the 5-year pe-
10 riod preceding the date on which the
11 petition is submitted; and

12 “(III) the resolution of the dis-
13 puted factual issues described in sub-
14 clause (I) would likely have an effect
15 on—

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

18 “(bb) whether the proposed
19 rule achieves the statutory pur-
20 pose.

21 “(ii) DENIAL OF PETITION.—If an
22 agency denies a petition submitted under
23 clause (i) in whole or in part, the agency
24 shall include in the rulemaking record an

1 explanation for the denial sufficient for ju-
2 dicial review, including—

3 “(I) findings by the agency
4 that—

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

8 “(bb) with respect to a rule
9 that the agency is required to re-
10 issue not less frequently than
11 once every 3 years, the interested
12 person submitting the petition
13 could have raised the disputed
14 factual issues in the petition dur-
15 ing the 5-year period preceding
16 the date on which the petition is
17 submitted; and

18 “(II) a reasoned determination
19 by the agency that the factual issues
20 raised by the petition, even if subject
21 to genuine dispute and not subject to
22 subclause (I)(bb), will not have an ef-
23 fect on—

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

1 “(bb) whether the proposed
2 rule achieves the statutory pur-
3 pose.

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

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

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

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

22 “(I) a hearing—

23 “(aa) would not advance the
24 consideration of the proposed
25 rule by the agency; or

1 “(bb) would, in light of the
2 need for agency action, unreason-
3 ably delay completion of the rule-
4 making; or

5 “(II) with respect to a rule that
6 the agency is required to reissue not
7 less frequently than once every 3
8 years, the interested person submit-
9 ting the petition could have raised the
10 disputed factual issues in the petition
11 during the 5-year period preceding the
12 date on which the petition is sub-
13 mitted.

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

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

23 “(A) the proposed rule to be considered at
24 the hearing; and

1 “(B) the factual issues to be considered at
2 the hearing.

3 “(3) HEARING REQUIREMENTS.—

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

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

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

15 “(B) PROCEDURES.—

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

20 “(ii) ADMISSION OF EVIDENCE.—In a
21 hearing held under this subsection, any
22 documentary or oral evidence may be re-
23 ceived, except that an agency, as a matter
24 of policy, shall provide for the exclusion of
25 immaterial or unduly repetitious evidence.

1 “(iii) ADOPTION OF RULES GOV-
2 ERNING HEARINGS.—To govern a hearing
3 held under this subsection, each agency
4 shall adopt rules that provide for—

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

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

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

24 “(IV) when appropriate, and to
25 the extent practicable, the consolida-

1 tion of proceedings with respect to
2 multiple petitions submitted under
3 this subsection into a single hearing.

4 “(C) RECORD OF HEARING.—A transcript
5 of testimony and exhibits, together with all pa-
6 pers and requests filed in the hearing, shall
7 constitute the exclusive record for decision of
8 the factual issues addressed in a hearing held
9 under this subsection.

10 “(4) JUDICIAL REVIEW.—

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

16 “(B) TIMING OF JUDICIAL REVIEW.—
17 There shall be no judicial review of the disposi-
18 tion of a petition by an agency under this sub-
19 section until judicial review of the final action
20 of the agency.

21 “(f) FINAL RULES.—

22 “(1) EFFECTIVENESS OF MAJOR OR HIGH-IM-
23 PACT RULE.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), in a rulemaking for a major

1 rule or a high-impact rule, an agency shall
2 adopt the most cost-effective rule that—

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

5 “(ii) meets relevant statutory objec-
6 tives.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(3) INFORMATION QUALITY.—If an agency
25 rulemaking rests upon scientific, technical, or eco-

1 nomic information, the agency shall adopt a final
2 rule on the basis of the best reasonably available sci-
3 entific, technical, or economic information.

4 “(4) ACCESSIBILITY.—

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

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

20 “(5) RULES ADOPTED AT THE END OF A PRESI-
21 DENTIAL ADMINISTRATION.—

22 “(A) IN GENERAL.—During the 60-day pe-
23 riod beginning on a transitional inauguration
24 day (as defined in section 3349a), with respect
25 to any final rule that had been placed on file

1 for public inspection by the Office of the Fed-
2 eral Register or published in the Federal Reg-
3 ister as of the date of the inauguration, but
4 which had not become effective by the date of
5 the inauguration, the agency issuing the rule
6 may, by order, delay the effective date of the
7 rule for not more than 90 days for the purpose
8 of obtaining public comment on whether—

9 “(i) the rule should be amended or re-
10 scinded; or

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

13 “(B) OPPORTUNITY FOR COMMENT.—If an
14 agency delays the effective date of a rule under
15 subparagraph (A), the agency shall give the
16 public not less than 30 days to submit com-
17 ments.

18 “(g) APPLICABILITY.—

19 “(1) PRIMACY OF CERTAIN RULEMAKING CON-
20 siderations and procedures in other federal
21 laws.—

22 “(A) CONSIDERATIONS.—If a rulemaking
23 is authorized under a Federal law that requires
24 an agency to consider, or prohibits an agency
25 from considering, a factor in a manner that is

1 inconsistent with, or that conflicts with, the re-
2 quirements under this section, for the purposes
3 of this section, the requirement or prohibition,
4 as applicable, in that other Federal law shall
5 apply to the agency in the rulemaking.

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

16 “(2) GUIDANCE AND RULES OF ORGANIZA-
17 TION.—Except as otherwise provided by law, this
18 section shall not apply to guidance or rules of agen-
19 cy organization, procedure, or practice.

20 “(3) EXCEPTIONS FOR GOOD CAUSE.—

21 “(A) FINDING OF GOOD CAUSE.—

22 “(i) IN GENERAL.—If an agency for
23 good cause finds that compliance with sub-
24 section (c), (d), (e), or (f)(2)(B) before
25 issuing a final rule is unnecessary, imprac-

1 ticable, or contrary to the public interest,
2 that subsection shall not apply and the
3 agency may issue the final rule or an in-
4 terim final rule, as applicable, under sub-
5 paragraph (B) or (C).

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

13 “(B) DIRECT FINAL RULES.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), if an agency makes a
16 finding under subparagraph (A)(i) that
17 compliance with subsection (c), (d), (e), or
18 (f)(2)(B) before issuing a final rule is un-
19 necessary, the agency shall, before issuing
20 the final rule—

21 “(I) publish in the Federal Reg-
22 ister the text of the final rule, the
23 brief statement required under sub-
24 paragraph (A)(ii), and a notice of op-
25 portunity for public comment;

1 “(II) establish a comment period
2 of not less than 30 days for any inter-
3 ested person to submit written mate-
4 rial, data, views, or arguments with
5 respect to the final rule; and

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

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

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

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

22 “(II) complete rulemaking in ac-
23 cordance with subsections (c), (d), (e),
24 and (f), as applicable.

25 “(C) INTERIM FINAL RULES.—

1 “(i) IN GENERAL.—If an agency for
2 good cause finds that compliance with sub-
3 section (c), (d), (e), or (f)(2)(B) before
4 issuing a final rule is impracticable or con-
5 trary to the public interest, the agency
6 shall issue an interim final rule by—

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

11 “(II) providing a cross-reference
12 in the portion of the Federal Register
13 relating to proposed rules that re-
14 quests public comment with respect to
15 the rule not later than 60 days after
16 the rule is published under subclause
17 (I).

18 “(ii) INTERIM PERIOD.—

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

23 “(aa) rescind the interim
24 rule;

1 “(bb) initiate rulemaking in
2 accordance with subsections (e)
3 through (f); or

4 “(cc) take final action to
5 adopt a final rule.

6 “(II) NO FORCE OR EFFECT.—If,
7 as of the end of the 180-day period
8 described in subclause (I), an agency
9 fails to take an action described in
10 item (aa), (bb), or (cc) of that sub-
11 clause, the interim final rule issued by
12 the agency shall have no force or ef-
13 fect.

14 “(4) EXEMPTION FOR MONETARY POLICY.—
15 This section shall not apply to a rulemaking or to
16 guidance that concerns monetary policy proposed or
17 implemented by the Board of Governors of the Fed-
18 eral Reserve System or the Federal Open Market
19 Committee.

20 “(h) DATE OF PUBLICATION.—A final rule, a direct
21 final rule described in subsection (g)(3)(B), or an interim
22 final rule described in subsection (g)(3)(C) shall be pub-
23 lished not later than 30 days (or, in the case of a major
24 rule or a high-impact rule, not later than 60 days) before
25 the effective date of the rule, except—

1 “(1) for guidance; or

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

4 “(i) RIGHT TO PETITION AND REVIEW OF RULES.—

5 Each agency shall—

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

9 “(2) on a continuing basis, invite interested
10 persons to submit, by electronic means, suggestions
11 for rules that warrant retrospective review and pos-
12 sible modification or repeal.

13 “(j) RULEMAKING GUIDELINES.—

14 “(1) ASSESSMENT OF RULES.—

15 “(A) IN GENERAL.—The Administrator
16 shall establish guidelines for the assessment, in-
17 cluding the quantitative and qualitative assess-
18 ment, of—

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

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

23 “(iii) other economic issues that are
24 relevant to rulemaking under this section
25 or other sections of this part; and

1 “(iv) risk assessments that are rel-
2 evant to rulemaking under this section and
3 other sections of this part.

4 “(B) AGENCY ANALYSIS OF RULES.—

5 “(i) IN GENERAL.—The rigor of the
6 cost-benefit analysis required by the guide-
7 lines established under subparagraph (A)
8 shall be commensurate, as determined by
9 the Administrator, with the economic im-
10 pact of a rule.

11 “(ii) RISK ASSESSMENT GUIDE-
12 LINES.—Guidelines for a risk assessment
13 described in subparagraph (A)(iv) shall in-
14 clude criteria for—

15 “(I) selecting studies and models;

16 “(II) evaluating and weighing
17 evidence; and

18 “(III) conducting peer reviews.

19 “(C) UPDATING GUIDELINES.—Not less
20 frequently than once every 10 years, the Ad-
21 ministrator shall update the guidelines estab-
22 lished under subparagraph (A) to enable each
23 agency to use the best available techniques to
24 quantify and evaluate present and future bene-

1 fits, costs, other economic issues, and risks as
2 objectively and accurately as practicable.

3 “(2) SIMPLIFICATION OF RULES.—

4 “(A) ISSUANCE OF GUIDELINES.—The Ad-
5 ministrator shall issue guidelines to promote co-
6 ordination, simplification, and harmonization of
7 agency rules during the rulemaking process.

8 “(B) REQUIREMENTS.—The guidelines
9 issued by the Administrator under subpara-
10 graph (A) shall advise each agency to—

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

15 “(ii) draft the rules of the agency to
16 be simple and easy to understand, with the
17 goal of minimizing the potential for uncer-
18 tainty and litigation arising from the un-
19 certainty.

20 “(3) CONSISTENCY IN RULEMAKING.—

21 “(A) IN GENERAL.—To promote consist-
22 ency in rulemaking, the Administrator shall—

23 “(i) issue guidelines to ensure that
24 rulemaking conducted in whole or in part
25 under procedures specified in provisions of

1 law other than those under this section
2 conform with the procedures set forth in
3 this section to the fullest extent allowed by
4 law; and

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

9 “(B) AGENCY ADOPTION OF REGULA-
10 TIONS.—Each agency shall adopt regulations
11 for the conduct of hearings consistent with the
12 guidelines issued under this paragraph.

13 “(k) AGENCY GUIDANCE; PROCEDURES TO ISSUE
14 MAJOR GUIDANCE; AUTHORITY TO ISSUE GUIDELINES
15 FOR ISSUANCE OF GUIDANCE.—

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

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

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

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

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

4 “(A) make and document a reasoned deter-
5 mination that—

6 “(i) such guidance is understandable
7 and complies with relevant statutory objec-
8 tives and regulatory provisions; and

9 “(ii) identifies the costs and benefits,
10 including all costs and benefits to be con-
11 sidered during a rulemaking under sub-
12 section (b), of requiring conduct con-
13 forming to such guidance and assures that
14 such benefits justify such costs; and

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

18 “(i) is reasonable;

19 “(ii) is understandable;

20 “(iii) is consistent with relevant statu-
21 tory and regulatory provisions and require-
22 ments or practices of other agencies;

23 “(iv) does not produce costs that are
24 unjustified by the benefits of the major
25 guidance; and

1 “(v) is otherwise appropriate.

2 “(3) ISSUANCE OF UPDATED GUIDANCE.—

3 “(A) IN GENERAL.—The Administrator
4 shall issue updated guidelines for use by agen-
5 cies in the issuance of guidance documents.

6 “(B) REQUIREMENTS.—The guidelines
7 issued by the Administrator under subpara-
8 graph (A) shall advise each agency—

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

13 “(ii) to draft the guidance documents
14 of the agency to be simple and easy to un-
15 derstand, with the goal of minimizing the
16 potential for uncertainty and litigation
17 arising from the uncertainty; and

18 “(iii) how to develop and implement a
19 strategy to ensure the proper use of guid-
20 ance by the agency.

21 “(l) MAJOR RULE AND HIGH-IMPACT RULE FRAME-
22 WORKS.—

23 “(1) IN GENERAL.—Beginning on the date that
24 is 180 days after the date of enactment of this sub-

1 section, when an agency publishes in the Federal
2 Register—

3 “(A) a proposed major rule or a proposed
4 high-impact rule, the agency shall include a po-
5 tential framework for assessing the rule, which
6 shall include a general statement of how the
7 agency intends to measure the effectiveness of
8 the rule; or

9 “(B) a final major rule or a final high-im-
10 pact rule, the agency shall include a framework
11 for assessing the rule under paragraph (2),
12 which shall include—

13 “(i) a clear statement of the regu-
14 latory objectives of the rule, including a
15 summary of the benefit and cost of the
16 rule;

17 “(ii) the methodology by which the
18 agency plans to analyze the rule, including
19 metrics by which the agency can meas-
20 ure—

21 “(I) the effectiveness and bene-
22 fits of the rule in producing the regu-
23 latory objectives of the rule; and

1 “(II) the impacts, including any
2 costs, of the rule on regulated and
3 other impacted entities;

4 “(iii) a plan for gathering data re-
5 garding the metrics described in clause (ii)
6 on an ongoing basis, or at periodic times,
7 including a method by which the agency
8 will invite the public to participate in the
9 review process and seek input from other
10 agencies; and

11 “(iv) a specific timeframe, as appro-
12 priate to the rule and not more than 10
13 years after the effective date of the rule,
14 under which the agency shall conduct the
15 assessment of the rule in accordance with
16 paragraph (2)(A).

17 “(2) ASSESSMENT.—

18 “(A) IN GENERAL.—Each agency shall as-
19 sess the data collected under paragraph
20 (1)(B)(iii), using the methodology set forth in
21 paragraph (1)(B)(ii) or any other appropriate
22 methodology developed after the issuance of a
23 final major rule or a final high-impact rule to
24 better determine whether the regulatory objec-
25 tive was achieved, with respect to the rule—

1 “(i) to analyze how the actual benefits
2 and costs of the rule may have varied from
3 those anticipated at the time the rule was
4 issued; and

5 “(ii) to determine whether—

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

8 “(II) the rule has been rendered
9 unnecessary, taking into consider-
10 ation—

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

13 “(bb) whether the rule over-
14 laps, duplicates, or conflicts
15 with—

16 “(AA) other rules; or

17 “(BB) to the extent
18 feasible, State and local gov-
19 ernment regulations;

20 “(III) the rule needs to be modi-
21 fied in order to accomplish the regu-
22 latory objective; and

23 “(IV) other alternatives to the
24 rule or modification of the rule could
25 better achieve the regulatory objective

1 while imposing a smaller burden on
2 society or increase cost-effectiveness,
3 taking into consideration any cost al-
4 ready incurred.

5 “(B) DIFFERENT METHODOLOGY.—If an
6 agency uses a methodology other than the
7 methodology under paragraph (1)(B)(ii) to as-
8 sess data under subparagraph (A), the agency
9 shall include as part of the notice required to
10 be published under subparagraph (D) an expla-
11 nation of the changes in circumstances that ne-
12 cessitated the use of that other methodology.

13 “(C) SUBSEQUENT ASSESSMENTS.—

14 “(i) IN GENERAL.—Except as pro-
15 vided in clause (ii), if, after an assessment
16 of a major rule or a high-impact rule
17 under subparagraph (A), an agency deter-
18 mines that the rule will remain in effect
19 with or without modification, the agency
20 shall—

21 “(I) determine a specific time, as
22 appropriate to the rule and not more
23 than 10 years after the date on which
24 the agency completes the assessment,
25 under which the agency shall conduct

1 another assessment of the rule in ac-
2 cordance with subparagraph (A); and

3 “(II) if the assessment conducted
4 under subclause (I) does not result in
5 a repeal of the rule, periodically assess
6 the rule in accordance with subpara-
7 graph (A) to ensure that the rule con-
8 tinues to meet the regulatory objec-
9 tive.

10 “(ii) EXEMPTION.—The Adminis-
11 trator may exempt an agency from con-
12 ducting a subsequent assessment of a rule
13 under clause (i) if the Administrator deter-
14 mines that there is a foreseeable and ap-
15 parent need for the rule beyond the time-
16 frame required under clause (i)(I).

17 “(D) PUBLICATION.—Not later than 180
18 days after the date on which an agency com-
19 pletes an assessment of a major rule or a high-
20 impact rule under subparagraph (A), the agen-
21 cy shall publish a notice of availability of the re-
22 sults of the assessment in the Federal Register,
23 including the specific time for any subsequent
24 assessment of the rule under subparagraph
25 (C)(i), if applicable.

1 “(3) OIRA OVERSIGHT.—The Administrator
2 shall—

3 “(A) issue guidance for agencies regarding
4 the development of the framework under para-
5 graph (1) and the conduct of the assessments
6 under paragraph (2)(A);

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

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

11 “(i) published promptly on a central-
12 ized Federal website; and

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

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

19 “(E) exempt an agency from including the
20 framework required under paragraph (1)(B)
21 when publishing a final major rule or a final
22 high-impact rule if the Administrator deter-
23 mines that compliance with paragraph (1)(B) is
24 unnecessary, impracticable, or contrary to the

1 public interest, as described in subsection
2 (g)(3)(A)(i); and

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

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

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

17 “(B) any other provision of law that re-
18 quires an agency to conduct retrospective re-
19 views of rules issued by the agency.

20 “(5) APPLICABILITY.—

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

23 “(i) a major rule or a high-impact
24 rule of an agency—

1 “(I) that the Administrator re-
2 viewed before the date of enactment of
3 this subsection;

4 “(II) for which the agency is re-
5 quired to conduct a retrospective re-
6 view under any other provision of law
7 that meets or exceeds the require-
8 ments of this subsection, as deter-
9 mined by the Administrator; or

10 “(III) for which the authorizing
11 statute is subject to periodic reauthor-
12 ization by Congress not less fre-
13 quently than once every 10 years;

14 “(ii) interpretative rules, general
15 statements of policy, or rules of agency or-
16 ganization, procedure, or practice;

17 “(iii) routine and administrative rules;

18 or

19 “(iv) a rule that is reviewed under
20 section 2222 of the Economic Growth and
21 Regulatory Paperwork Reduction Act of
22 1996 (12 U.S.C. 3311).

23 “(B) DIRECT AND INTERIM FINAL MAJOR
24 RULE OR HIGH-IMPACT RULE.—In the case of a
25 major rule or a high-impact rule of an agency

1 high-impact rule in accordance with sub-
2 paragraphs (A) and (D) of paragraph (2).

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

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

16 “(D) ADMINISTRATOR.—Any determina-
17 tion, action, or inaction of the Administrator
18 under this subsection shall not be subject to ju-
19 dicial review.”.

20 **SEC. 4. SCOPE OF REVIEW.**

21 Section 706 of title 5, United States Code, is amend-
22 ed—

23 (1) in the first sentence of the matter preceding
24 paragraph (1), by striking “To the extent nec-

1 essary” and inserting “(a) IN GENERAL.—To the
2 extent necessary”; and

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

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

6 (B) in paragraph (2)—

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

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

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

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

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

1 “(c) PRECLUSION OF REVIEW.—The determination
2 of whether a rule is a major rule within the meaning of
3 subparagraphs (B) and (C) of section 551(18) shall not
4 be subject to judicial review.

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

8 “(e) AGENCY INTERPRETATION OF RULES.—The
9 weight that a reviewing court gives an interpretation by
10 an agency of a rule of that agency shall depend on the
11 thoroughness evident in the consideration of the rule by
12 the agency, the validity of the reasoning of the agency,
13 and the consistency of the interpretation with earlier and
14 later pronouncements.”.

15 **SEC. 5. ADDED DEFINITIONS.**

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

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

20 (2) by redesignating paragraph (2) as para-
21 graph (3);

22 (3) by inserting after paragraph (1) the fol-
23 lowing:

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

1 (4) in paragraph (3), as so redesignated, by
2 striking the period at the end and inserting “; and”;
3 and

4 (5) by adding at the end the following:

5 “(4) ‘substantial evidence’ means such relevant
6 evidence as a reasonable mind might accept as ade-
7 quate to support a conclusion in light of the record
8 considered as a whole.”.

9 **SEC. 6. APPLICATION.**

10 The amendments made by this Act to sections 553,
11 701(b), and 706 of title 5, United States Code, shall not
12 apply to any rulemaking, as defined in section 551 of title
13 5, United States Code, as amended by section 2 of this
14 Act, that is pending or completed as of the date of enact-
15 ment of this Act.

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

17 (a) CONSUMER PRODUCT SAFETY ACT.—Section 9(i)
18 of the Consumer Product Safety Act (15 U.S.C. 2058(i))
19 is amended, in the first sentence, by striking “section
20 553(e)” and inserting “section 553(i)”.

21 (b) DEFENSE PRODUCTION ACT OF 1950.—Section
22 709(b)(1) of the Defense Production Act of 1950 (50
23 U.S.C. 4559(b)(1)) is amended by striking “for not less
24 than 30 days, consistent with the requirements of section

1 553(b)” and inserting “in a manner consistent with the
2 requirements of section 553(e)”.

3 (c) ENDANGERED SPECIES ACT OF 1973.—Section
4 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C.
5 1533(b)(3)) is amended—

6 (1) in subparagraph (A), in the first sentence,
7 by striking “section 553(e)” and inserting “section
8 553(i)”;

9 (2) in subparagraph (D)(i), in the first sen-
10 tence, by striking “section 553(e)” and inserting
11 “section 553(i)”.

12 (d) EXPEDITED FUNDS AVAILABILITY ACT.—Section
13 609(a) of the Expedited Funds Availability Act (12 U.S.C.
14 4008(a)) is amended, in the matter preceding paragraph
15 (1), by striking “section 553(c)” and inserting “section
16 553”.

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

20 (1) in subsection (e)(1), by striking “(other
21 than clause (B) of the last sentence of subsection (b)
22 of such section) of title 5 of the United States Code”
23 and inserting “of title 5, United States Code, other
24 than subsection (g)(3) of such section,”; and

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

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

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

8 (2) in section 16(c)(2) (15 U.S.C. 1203(c)(2)),
9 by striking “section 553(b)” and inserting “section
10 553(c)”.

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

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

19 (1) in section 643(b)(3) (42 U.S.C.
20 13603(b)(3)), in the first sentence, by striking
21 “(notwithstanding subsections (a)(2), (b)(B), and
22 (d)(3) of such section)” and inserting “(notwith-
23 standing subsections (a)(2), (g)(3), and (h)(2) of
24 such section)”; and

1 (2) in section 685 (42 U.S.C. 13643), in the
2 second sentence, by striking “(notwithstanding sub-
3 sections (a)(2), (b)(B), and (d)(3) of such section)”
4 and inserting “(notwithstanding subsections (a)(2),
5 (g)(3), and (h)(2) of such section)”.

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

11 (j) MCKINNEY-VENTO HOMELESS ASSISTANCE
12 ACT.—Section 433 of the McKinney-Vento Homeless As-
13 sistance Act (42 U.S.C. 11387) is amended, in the second
14 sentence, by striking “(notwithstanding subsections
15 (a)(2), (b)(B), and (d)(3) of such section)” and inserting
16 “(notwithstanding subsections (a)(2), (g)(3), and (h)(2) of
17 such section)”.

18 (k) NATIVE AMERICAN PROGRAMS ACT OF 1974.—
19 Section 814 of the Native American Programs Act of 1974
20 (42 U.S.C. 2992b-1) is amended—

21 (1) in subsection (b)—

22 (A) in paragraph (1), by striking “Sub-
23 paragraph (A) of the last sentence of section
24 553(b) of title 5, United States Code, shall not
25 apply with respect to any interpretative rule or

1 general statement of policy” and inserting
2 “Section 553(c) of title 5, United States Code,
3 shall apply with respect to guidance”;

4 (B) in paragraph (2)—

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

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

12 (C) in paragraph (3), in the matter pre-
13 ceding subparagraph (A)—

14 (i) by striking “The first 2 sentences
15 of section 553(b)” and inserting “Section
16 553(c)”; and

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

20 (2) in subsection (c)—

21 (A) in the matter preceding paragraph
22 (1)—

23 (i) by striking “section 553(d)” and
24 inserting “section 553(h)”; and

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

4 (B) in the flush text following paragraph
5 (2), by striking “the first 2 sentences of section
6 553(b)” and inserting “section 553(c)”;

7 (3) in subsection (d), by striking “an interpre-
8 tative rule) and each general statement of policy”
9 and inserting “guidance”);

10 (4) in subsection (e)—

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

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

16 (5) in subsection (f)—

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

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

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

23 “(g) In this section, the term ‘guidance’ has the
24 meaning given the term in section 551 of title 5, United
25 States Code.”.

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

5 (m) NOISE CONTROL ACT OF 1972.—Section 6(e)(2)
6 of the Noise Control Act of 1972 (42 U.S.C. 4905(e)(2))
7 is amended by striking “the first sentence of section
8 553(e) of title 5” and inserting “section 553(e)(4)(A) of
9 title 5”.

10 (n) POISON PREVENTION PACKAGING ACT OF
11 1970.—The Poison Prevention Packaging Act of 1970 (15
12 U.S.C. 1471 et seq.) is amended—

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

18 (2) in section 7(c)(2) (15 U.S.C. 1476(c)(2)),
19 by striking “section 553(b)” and inserting “section
20 553(c)”.

21 (o) POULTRY PRODUCTS INSPECTION ACT.—Section
22 14(e) of the Poultry Products Inspection Act (21 U.S.C.
23 463(e)) is amended by striking “section 553(e) of title 5,
24 United States Code” and inserting “section 553(e)(4) of
25 title 5, United States Code,”.

1 (p) RURAL ELECTRIFICATION ACT OF 1936.—Sec-
2 tion 206(a)(1) of the Rural Electrification Act of 1936
3 (7 U.S.C. 927(a)(1)) is amended by striking “subsections
4 (b) through (e)” and inserting “subsections (b) through
5 (k)”.

6 (q) SOCIAL SECURITY ACT.—The Social Security Act
7 (42 U.S.C. 301 et seq.) is amended—

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

17 (2) in section 1871(b)(2) (42 U.S.C.
18 1395hh(b)(2)), by striking subparagraph (C) and in-
19 serting the following:

20 “(C) subsection (e) of section 553 of title
21 5, United States Code, does not apply pursuant
22 to subsection (g)(3) of such section.”.

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

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

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

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

10 (4) in section 601(2), by striking “section
11 553(b)” and inserting “section 553(c)”;

12 (5) in section 1103(b)(1), by striking “section
13 553(b)(1), (2), and (3)” and inserting “section
14 553(c)”;

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

18 (s) TITLE 41, UNITED STATES CODE.—Section
19 8503(a)(2) of title 41, United States Code, is amended
20 by striking “section 553(b) to (e)” and inserting “section
21 553”.

22 (t) TITLE 46, UNITED STATES CODE.—Section
23 14104(b) of title 46, United States Code, is amended, in
24 the second sentence, by striking “shall be considered to
25 be an interpretive regulation for purposes of section 553

1 of title 5” and inserting “shall be subject to section 553
2 of title 5”.

3 (u) TOXIC SUBSTANCES CONTROL ACT.—Section
4 19(c)(1)(B)(ii) of the Toxic Substances Control Act (15
5 U.S.C. 2618(c)(1)(B)(ii)) is amended by striking “section
6 553(e)” and inserting “section 553(f)(2)”.