

115TH CONGRESS
1ST SESSION

S. _____

To improve the regulatory process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. MCCASKILL introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To improve the regulatory process, and for other purposes.

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

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

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Regulatory Improvement and Transparency Act of
6 2017”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ADMINISTRATIVE PROCEDURES IMPROVEMENT ACT

Sec. 101. Short title.

Sec. 102. Definitions.

Sec. 103. Rulemaking.

TITLE II—PILOT COMMISSION ON RETROSPECTIVE REVIEW

- Sec. 201. Short title.
- Sec. 202. Definitions.
- Sec. 203. Establishment of commission.
- Sec. 204. Duties of the commission.
- Sec. 205. Powers of the commission.
- Sec. 206. Commission personnel matters.
- Sec. 207. Termination of the commission.
- Sec. 208. Authorization of appropriations.
- Sec. 209. GAO report.

TITLE III—PLAIN WRITING ACT FOR REGULATIONS

- Sec. 301. Short title.
- Sec. 302. Purpose.
- Sec. 303. Definitions.
- Sec. 304. Responsibilities of federal agencies.
- Sec. 305. Responsibilities of the Director of the Office of Management and Budget.
- Sec. 306. Reports.
- Sec. 307. Judicial review and enforceability.

TITLE IV—OIRA TRANSPARENCY

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Purpose.
- Sec. 404. Transparency.

TITLE V—COST-BENEFIT ANALYSIS IMPROVEMENT

- Sec. 501. Short title.
- Sec. 502. Definitions.
- Sec. 503. Cost-benefit study.

1 **TITLE I—ADMINISTRATIVE PRO-**
 2 **CEDURES IMPROVEMENT ACT**

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

4 This title may be cited as the “Administrative Proce-
 5 dures Improvement Act of 2017”.

6 **SEC. 102. DEFINITIONS.**

7 Title 5, United States Code, is amended—

8 (1) in section 551—

9 (A) in paragraph (5), by striking “rule
 10 making” and inserting “rulemaking”;

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

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

5 (D) in paragraph (14), by striking the pe-
6 riod at the end and inserting a semicolon; and

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

8 “(15) ‘major rule’ means any rule that the Ad-
9 ministrator determines has resulted in or is likely to
10 result in—

11 “(A) an annual effect on the economy of
12 \$100,000,000 or more, adjusted at least every
13 5 years to reflect increases in the Consumer
14 Price Index for All Urban Consumers, as pub-
15 lished by the Bureau of Labor Statistics of the
16 Department of Labor;

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

21 “(C) significant adverse effects on competi-
22 tion, employment, investment, productivity, in-
23 novation, public health and safety, or the envi-
24 ronment;

1 “(16) ‘Office of Information and Regulatory Af-
2 fairs’ means the office established under section
3 3503 of title 44 and any successor to that office;
4 and

5 “(17) ‘Administrator’ means the Administrator
6 of the Office of Information and Regulatory Af-
7 fairs.”; and

8 (2) in section 804, by striking paragraph (2)
9 and inserting the following:

10 “(2) The term ‘major rule’ has the meaning
11 given the term in section 551.”.

12 **SEC. 103. RULEMAKING.**

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

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

17 (2) in subsection (a), by striking “(a) This sec-
18 tion applies” and inserting the following:

19 “(a) APPLICABILITY.—This section applies”; and

20 (3) by striking subsections (b) through (e) and
21 inserting the following:

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

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

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

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

12 “(c) INITIATION OF RULEMAKING FOR MAJOR
13 RULES.—

14 “(1) NOTICE FOR MAJOR RULES.—When an
15 agency determines to initiate a rulemaking that may
16 result in a major rule, the agency shall—

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

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

22 “(i) briefly describe the subject, the
23 problem to be solved, and the objectives of
24 the rule;

1 “(ii) reference the legal authority
2 under which the rule would be proposed;
3 and

4 “(iii) indicate how interested persons
5 may submit written material for the dock-
6 et.

7 “(2) ACCESSIBILITY.—All material submitted to
8 an agency under paragraph (1)(B)(iii) shall be made
9 accessible to the public and promptly placed in the
10 docket required under paragraph (1), except with re-
11 spect to material that is exempt from disclosure
12 under section 552(b).

13 “(3) TIMETABLE.—

14 “(A) IN GENERAL.—With respect to a
15 rulemaking for a major rule, the agency pro-
16 posing the rule shall establish a timetable for
17 the rulemaking that—

18 “(i) includes intermediate and final
19 completion dates for actions of the agency;
20 and

21 “(ii) shall be published in the elec-
22 tronic docket.

23 “(B) CONSIDERATION OF FACTORS.—In
24 establishing the timetable required under sub-

1 paragraph (A), an agency shall consider rel-
2 evant factors, including—

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

5 “(ii) the resources available to the
6 agency;

7 “(iii) any mandatory judicial orders
8 governing the timing of the rulemaking;

9 “(iv) the national significance of the
10 rulemaking; and

11 “(v) all mandatory statutory require-
12 ments that govern the timing of the rule-
13 making.

14 “(C) REPORT REQUIRED.—

15 “(i) IN GENERAL.—An agency that
16 fails to meet an intermediate or final com-
17 pletion date for action established under
18 subparagraph (A) shall submit to the ap-
19 propriate congressional committees with
20 jurisdiction over the agency and the Direc-
21 tor of the Office of Management and
22 Budget a report regarding why the agency
23 failed to meet the completion date.

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

4 “(I) include an amended time-
5 table for the rulemaking; and

6 “(II) be published—

7 “(aa) in the Federal Reg-
8 ister; and

9 “(bb) on the publicly avail-
10 able website of the Federal Reg-
11 ister.

12 “(d) NOTICE OF PROPOSED RULEMAKING.—

13 “(1) IN GENERAL.—If an agency determines to
14 issue a rule, the agency shall—

15 “(A) establish an electronic docket for that
16 rulemaking, which may have a physical counter-
17 part;

18 “(B) notify the Administrator; and

19 “(C) publish a notice of proposed rule-
20 making in the Federal Register, which shall in-
21 clude—

22 “(i) if applicable, a statement of the
23 time, place, and nature of any public rule-
24 making proceedings;

1 “(ii) a reference to the legal authority
2 under which the rule is proposed;

3 “(iii) the text of the proposed rule;

4 “(iv) a summary of information
5 known to the agency concerning the con-
6 siderations described in subsection (b);

7 “(v) a reasoned preliminary expla-
8 nation regarding how the proposed rule
9 meets the statutory objectives; and

10 “(vi) if applicable, a completed Regu-
11 latory Transparency Form as described in
12 subsection (j).

13 “(2) PUBLIC COMMENT.—

14 “(A) IN GENERAL.—After publishing a no-
15 tice of proposed rulemaking, an agency shall
16 provide interested persons an opportunity to
17 participate in the rulemaking through the sub-
18 mission of written material, data, views, or ar-
19 guments with or without opportunity for oral
20 presentation.

21 “(B) TIMELINE.—An agency shall provide
22 not less than 30 days, or, with respect to a pro-
23 posed major rule, not less than 90 days, for in-
24 terested persons to submit written material,
25 data, views, or arguments.

1 “(C) PUBLICATION IN DOCKET.—All mate-
2 rial submitted under this paragraph shall be
3 made accessible to the public and promptly
4 placed in the docket required under paragraph
5 (1)(A) for the rule, except with respect to mate-
6 rial that is exempt from disclosure under sec-
7 tion 552(b).

8 “(3) CHANGE OF CLASSIFICATION AFTER PUB-
9 LICATION OF NOTICE.—If, after an agency submits
10 the notification and publishes the notice required
11 under paragraph (1), a proposed rule is determined
12 to be a major rule, the agency shall—

13 “(A) publish a notice in the Federal Reg-
14 ister with respect to the change of the classi-
15 fication of the rule; and

16 “(B) allow interested persons an additional
17 opportunity of the greater of an additional 30
18 days or a total of 90 days, including the origi-
19 nal comment period for the rule, to comment
20 on—

21 “(i) the rule; and

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

1 “(e) FINAL RULES.—When an agency adopts a final
2 rule, the agency shall publish a notice of final rulemaking
3 in the Federal Register, which shall include—

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

6 “(2) a reasoned determination by the agency re-
7 garding the considerations described in subsection
8 (b);

9 “(3) with respect to a major rule—

10 “(A) a reasoned determination by the
11 agency that the rule fulfills the statutory objec-
12 tives;

13 “(B) the framework for assessing the
14 major rule, as described in subsection (i); and

15 “(C) if applicable, a completed Regulatory
16 Transparency Form as described in subsection
17 (j); and

18 “(4) a response to each significant issue raised
19 in the comments on the proposed rule.

20 “(f) EXEMPTIONS.—

21 “(1) GOOD CAUSE.—

22 “(A) IN GENERAL.—If an agency for good
23 cause finds that compliance with subsection (c),
24 (d), or (e) before issuing a final rule is unneces-
25 sary, impracticable, or contrary to the public in-

1 terest, that subsection shall not apply and the
2 agency may issue the final rule.

3 “(B) INCORPORATION OF GOOD CAUSE
4 FINDING.—If an agency makes a finding under
5 subparagraph (A), the agency shall include that
6 finding and a brief statement with respect to
7 the reasons for that finding in the final rule
8 issued by the agency.

9 “(2) OTHER RULES AND STATEMENTS OF POL-
10 ICY.—Except as otherwise required by law, this sec-
11 tion shall not apply to general statements of policy
12 or rules of agency organization, procedure, or prac-
13 tice.

14 “(3) INTERIM RULES.—

15 “(A) IN GENERAL.—If an agency for good
16 cause finds, and incorporates the finding and a
17 brief statement of reasons for the finding in the
18 rule issued, that compliance with subsections
19 (c), (d), and (e) before the issuance of an in-
20 terim rule is unnecessary, such subsections shall
21 not apply and the agency may issue an interim
22 rule.

23 “(B) IMPRACTICABILITY.—If an agency for
24 good cause finds, and incorporates the finding
25 and a brief statement of reasons for the finding

1 in the rule issued, that compliance with sub-
2 sections (c), (d), and (e) before the issuance of
3 an interim rule is impracticable or contrary to
4 the public interest, such subsections shall not
5 apply to the adoption of an interim rule by the
6 agency.

7 “(C) PROCEDURES FOR ADOPTING IN-
8 TERIM MAJOR RULE.—

9 “(i) IN GENERAL.—If, after complying
10 with subparagraph (A) or (B), an agency
11 adopts an interim rule, the agency shall
12 commence proceedings that comply with
13 subsections (c), (d), and (e) immediately
14 upon publication of the interim rule.

15 “(ii) TIMELINE.—Beginning on the
16 date that is 270 days after the date on
17 which an agency adopts an interim major
18 rule, the interim major rule shall have no
19 force or effect if the agency does not—

20 “(I) rescind the interim major
21 rule;

22 “(II) initiate rulemaking in ac-
23 cordance with subsections (c), (d),
24 and (e); or

1 “(III) take final action to adopt
2 a final major rule.

3 “(4) MONETARY POLICY.—This section shall
4 not apply to any rulemaking or guidance that con-
5 cerns monetary policy proposed or implemented by
6 the Board of Governors of the Federal Reserve Sys-
7 tem or the Federal Open Market Committee.

8 “(g) DATE OF PUBLICATION OF RULE.—A final sub-
9 stantive rule shall be published in the Federal Register
10 not later than 30 days or, in the case of a major rule,
11 60 days, before the effective date of the rule, except as
12 otherwise provided by an agency for good cause and as
13 published with the rule.

14 “(h) RIGHT TO PETITION AND REVIEW OF RULES.—
15 Each agency shall—

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

19 “(2) on a continuing basis, permit interested
20 persons to submit, by electronic means, suggestions
21 for rules that warrant retrospective review and pos-
22 sible modification or repeal.

23 “(i) MAJOR RULE FRAMEWORKS.—

24 “(1) IN GENERAL.—Beginning on the date that
25 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, the agency
4 shall include a potential framework for assess-
5 ing the rule, which shall include a general state-
6 ment of how the agency intends to measure how
7 well the rule meets the regulatory objectives of
8 the rule; or

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

12 “(i) a clear statement of the regu-
13 latory objectives of the rule, including a
14 summary of the benefit and cost of the
15 rule to the extent the costs and benefits of
16 the rule were analyzed;

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

21 “(I) the extent to which the rule
22 is meeting the regulatory and statu-
23 tory objectives of the rule;

24 “(II) the benefits achieved by the
25 rule; and

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

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

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

18 “(2) ASSESSMENT.—

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

1 regulatory objective was achieved, with respect
2 to the rule—

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

7 “(ii) to determine whether—

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

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

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

15 “(bb) whether the rule over-
16 laps with or duplicates—

17 “(AA) other rules; or

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

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

24 “(IV) other alternatives to the
25 rule or modification of the rule could

1 better achieve the regulatory objective
2 while maximizing net benefits; and

3 “(V) an additional assessment of
4 the rule in accordance with this sub-
5 paragraph is appropriate at a specific
6 time during the 10-year period fol-
7 lowing completion of the assessment.

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

16 “(C) PUBLICATION.—Not later than 180
17 days after the date on which an agency com-
18 pletes an assessment of a major rule under sub-
19 paragraph (A), the agency shall publish a notice
20 of availability of the results of the assessment
21 in the Federal Register, including the specific
22 time for any subsequent assessment of the rule
23 under subparagraph (C)(i), if applicable.

24 “(3) OIRA OVERSIGHT.—The Administrator
25 shall—

1 “(A) issue guidance, based on models de-
2 veloped by the National Academy for Public
3 Administration under the Cost-Benefit Analysis
4 Improvement Act of 2017 for agencies regard-
5 ing the development of the framework under
6 paragraph (1) and the conduct of the assess-
7 ments under paragraph (2)(A);

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

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

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

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

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

20 “(E) exempt an agency from including the
21 framework required under paragraph (1)(B)
22 when publishing a final major rule if the Ad-
23 ministrator determines that compliance with
24 paragraph (1)(B) is unnecessary, impracticable,
25 or contrary to the public interest; and

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

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

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

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

16 “(5) APPLICABILITY.—

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

19 “(i) a major rule of an agency—

20 “(I) that was issued before the
21 date of enactment of this subsection;

22 “(II) that the Administrator re-
23 viewed before the date of enactment of
24 this subsection;

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

7 “(IV) for which the authorizing
8 statute is subject to periodic reauthor-
9 ization by Congress not less fre-
10 quently than once every 10 years;

11 “(ii) interpretative rules, general
12 statements of policy, or rules of agency or-
13 ganization, procedure, or practice;

14 “(iii) routine and administrative rules;
15 or

16 “(iv) a rule that is subject to review
17 under section 2222 of the Economic
18 Growth and Regulatory Paperwork Reduc-
19 tion Act of 1996 (12 U.S.C. 3311).

20 “(B) DIRECT AND INTERIM FINAL MAJOR
21 RULE.—In the case of a major rule of an agen-
22 cy for which the agency is not required to issue
23 a notice of proposed rulemaking in response to
24 an emergency or a statutorily imposed deadline,
25 the agency shall publish the framework required

1 under paragraph (1)(B) in the Federal Register
2 not later than 180 days after the date on which
3 the agency publishes the rule.

4 “(6) RECOMMENDATIONS TO CONGRESS.—If,
5 under an assessment conducted under paragraph
6 (2), an agency determines that a major rule should
7 be modified or repealed, the agency may submit to
8 Congress recommendations for legislation to amend
9 applicable provisions of law if the agency is prohib-
10 ited from modifying or repealing the rule under an-
11 other provision of law.

12 “(7) JUDICIAL REVIEW.—

13 “(A) IN GENERAL.—Judicial review of
14 agency compliance with this subsection is lim-
15 ited to whether an agency—

16 “(i) published the framework for as-
17 sessment of a major rule under paragraph
18 (1); or

19 “(ii) completed and published the re-
20 quired assessment of a major rule under
21 subparagraphs (A) and (D) of paragraph
22 (2).

23 “(B) REMEDY AVAILABLE.—In granting
24 relief in an action brought under subparagraph
25 (A), a court may only issue an order remanding

1 the major rule, as applicable, to the agency to
2 comply with paragraph (1) or subparagraph (A)
3 or (D) of paragraph (2), as applicable.

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

10 “(D) ADMINISTRATOR.—Any determina-
11 tion, action, or inaction of the Administrator
12 under this subsection shall not be subject to ju-
13 dicial review.

14 “(j) UNIFORM REGULATORY TRANSPARENCY
15 FORM.—

16 “(1) ESTABLISHMENT.—Not later than 120
17 days after the date of enactment of this subsection,
18 the Administrator shall establish a single, uniform
19 regulatory impact analysis disclosure form titled the
20 ‘Regulatory Transparency Form’ for each major rule
21 under this section for which the agency conducts a
22 cost-benefit analysis.

23 “(2) PURPOSE.—The purpose of the Regulatory
24 Transparency Form shall be to increase trans-
25 parency in the rulemaking process by providing in-

1 formation regarding the assessment of costs, bene-
2 fits, risks, and uncertainties by an agency using
3 readily understandable and consistent language.

4 “(3) CONTENT.—The Regulatory Transparency
5 Form shall—

6 “(A) utilize an easily-readable typeface and
7 font, not to exceed a single page front and
8 back; and

9 “(B) include, with respect to a proposed or
10 final major rule—

11 “(i) total undiscounted monetized
12 costs and benefits;

13 “(ii) total monetized costs and bene-
14 fits discounted at not less than 3 appro-
15 priate discount rates;

16 “(iii) an estimate of the degree of cer-
17 tainty for all monetized undiscounted and
18 discounted costs and benefits;

19 “(iv) a list of all non-monetized costs
20 and benefits; and

21 “(v) any other information as deter-
22 mined by the Administrator.

23 “(4) IMPLEMENTATION.—

24 “(A) IN GENERAL.—The Administrator
25 shall—

1 **TITLE II—PILOT COMMISSION**
2 **ON RETROSPECTIVE REVIEW**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Pilot Retrospective
5 Review Commission Act of 2017”.

6 **SEC. 202. DEFINITIONS.**

7 In this title:

8 (1) **COMMISSION.**—The term “Commission”
9 means the Pilot Regulatory Review Commission es-
10 tablished under section 203.

11 (2) **COVERED REGULATION.**—The term “cov-
12 ered regulation” means a regulation impacting the
13 transportation sector that has been in effect for not
14 less than 10 years before the date on which the
15 Commission is established.

16 (3) **COVERED REGULATORY AGENCY.**—The
17 term “covered regulatory agency” means an agency,
18 as defined in section 3502 of title 44, United States
19 Code, that has the authority to issue a regulation
20 that impacts the transportation sector.

21 (4) **REGULATION.**—The term “regulation”
22 means a rule, as defined in section 551 of title 5,
23 United States Code.

1 **SEC. 203. ESTABLISHMENT OF COMMISSION.**

2 (a) **ESTABLISHMENT.**—There is established in the
3 legislative branch a commission to be known as the “Pilot
4 Regulatory Review Commission”.

5 (b) **MEMBERSHIP.**—

6 (1) **COMPOSITION.**—The Commission shall be
7 composed of 12 members, of whom—

8 (A) 3 members shall be appointed by the
9 majority leader of the Senate;

10 (B) 3 members shall be appointed by the
11 minority leader of the Senate;

12 (C) 3 members shall be appointed by the
13 Speaker of the House of Representatives; and

14 (D) 3 members shall be appointed by the
15 minority leader of the House of Representa-
16 tives.

17 (2) **DATE.**—The appointment of the members
18 of the Commission shall be made not later than 60
19 days after the date of enactment of this Act.

20 (3) **QUALIFICATIONS.**—Members appointed to
21 the Commission shall be citizens of the United
22 States with a significant depth of experience and re-
23 sponsibilities in matters relating to regulation of the
24 transportation sector, government service, regulatory
25 policy, economics, science, Federal agency manage-
26 ment, public administration, and law.

1 (4) CHAIR.—At the first meeting of the Com-
2 mission, a majority of the members of the Commis-
3 sion present and voting shall elect the Chair of the
4 Commission.

5 (c) PERIOD OF APPOINTMENT; VACANCIES.—Mem-
6 bers shall be appointed for the life of the Commission. Any
7 vacancy in the Commission shall not affect the powers of
8 the Commission, but shall be filled in the same manner
9 as the original appointment.

10 (d) INITIAL MEETING.—Not later than 30 days after
11 the date on which all members of the Commission have
12 been appointed, the Commission shall hold the first meet-
13 ing of the Commission.

14 (e) MEETINGS.—The Commission shall meet at the
15 call of the Chair and shall be open to the public.

16 (f) QUORUM.—Eight members of the Commission
17 shall constitute a quorum, but a lesser number of members
18 may hold hearings.

19 (g) NONAPPLICABILITY OF THE FEDERAL ADVISORY
20 COMMITTEE ACT.—The Federal Advisory Committee Act
21 (5 U.S.C. App.) shall not apply to the Commission.

22 (h) APPLICABILITY OF CERTAIN ETHICS RULES.—
23 Members of the Commission shall be considered special
24 Government employees, as defined in section 202 of title
25 18, United States Code.

1 **SEC. 204. DUTIES OF THE COMMISSION.**

2 (a) PURPOSE.—The purpose of the Commission is to
3 evaluate and provide recommendations for modification,
4 consolidation, or repeal of covered regulations with the
5 aim of streamlining regulatory compliance by reducing
6 compliance costs, encouraging growth and innovation, and
7 improving competitiveness while continuing to protect
8 public health and safety and maximize net public benefit.

9 (b) REQUIREMENTS.—In carrying out subsection (a),
10 the Commission shall—

11 (1) give consideration in its analysis of covered
12 regulations to those that—

13 (A) impose disproportionately high costs
14 on a small entity (as defined in section 601 of
15 title 5, United States Code);

16 (B) create substantial recurring paperwork
17 burdens or transaction costs;

18 (C) could better meet regulatory objectives;

19 or

20 (D) overlap, duplicate, or conflict with
21 other Federal, State, or local law;

22 (2) solicit and review comments from the public
23 on the covered regulations described in this section;
24 and

25 (3) develop a set of covered regulations to rec-
26 ommend be modified, consolidated, or repealed to be

1 submitted to agencies for agency and Congressional
2 review in accordance with subsection (i).

3 (c) PUBLIC COMMENTS.—

4 (1) IN GENERAL.—Not later than 60 days after
5 the date of the initial meeting of the Commission,
6 the Commission shall initiate a public comment pe-
7 riod of not less than 120 days to solicit and collect
8 written recommendations from the general public,
9 interested parties, Federal agencies, and other rel-
10 evant entities regarding which covered regulations
11 should be examined.

12 (2) REVIEW AND PUBLICATION.—At the end of
13 the period for the submission of recommendations
14 under this subsection, the commission shall review
15 all submitted recommendations and all recommenda-
16 tions shall be published on the website of the Com-
17 mission and summarized in the Federal Register.

18 (d) COMMISSION OUTREACH.—During the public
19 comment period described in subsection (c), the Commis-
20 sion shall conduct public outreach to better inform the
21 members of the Commission of the interest of the public
22 and possible contributions to the work of the Commission.

23 (e) EXAMINATION OF REGULATIONS AND INITIAL
24 REPORT.—

1 (1) PROCESS FOR EXAMINATION.—In exam-
2 ining covered regulations under this section, the
3 Commission shall determine the progress of each
4 covered regulation in achieving the stated policy
5 goals, by using multiple resources, to the extent
6 practicable, including—

7 (A) quantitative metrics analyzing the
8 costs and benefits of the covered regulation;

9 (B) a qualitative description of the costs
10 and benefits of the covered regulation;

11 (C) testimony from agency and outside ex-
12 perts and impacted communities; and

13 (D) research from the staff of the Commis-
14 sion.

15 (2) DEADLINE.—Not later than 2 years after
16 the date on which the Commission convenes under
17 section 203(d), the Commission shall complete an
18 examination of covered regulations and publish a re-
19 port, which shall be approved by not fewer than 8
20 members of the Commission, and include —

21 (A) the findings and conclusions of the
22 Commission for the improvement of covered
23 regulations examined by the Commission; and

24 (B) a list of recommendations for changes
25 to the covered regulations examined by the

1 Commission, which may include recommenda-
2 tions for modification, consolidation, or repeal
3 of such covered regulations;

4 (C) a list of any recommended statutory
5 changes for Congress to consider; and

6 (D) to the extent possible, the estimated
7 cost or savings associated with each rec-
8 ommendation.

9 (3) PUBLIC COMMENT PERIOD.—During the
10 90-day period beginning on the date on which the
11 report required under paragraph (2) is published,
12 the Commission shall—

13 (A) solicit comments from the public on
14 such report, using the same process established
15 under subsection (c); and

16 (B) publish any comments received under
17 subparagraph (A) on the website of the Com-
18 mission and summarize the comments in the
19 Federal Register.

20 (f) FINAL REPORT.—

21 (1) IN GENERAL.—Not later than 180 days
22 after the date on which the 90-day period described
23 in subsection (e)(3) ends, the Commission shall—

24 (A) review any comments received under
25 subsection (e)(3);

1 (B) incorporate any relevant comments re-
2 ceived under subsection (e)(3) into the report;
3 and

4 (C) submit the revised report to Congress
5 and the head of each covered regulatory agency.

6 (2) REVIEW BY AGENCY.—Not later than 180
7 days after the date on which a revised report is sub-
8 mitted under paragraph (1)(C), the head of each
9 covered regulatory agency shall—

10 (A) conduct a review of the relevant rec-
11 ommendations in the report; and

12 (B) submit a report to the appropriate
13 committees of Congress on the review con-
14 ducted under subparagraph (A), which shall in-
15 clude—

16 (i) an explanation of which rec-
17 ommendations the head of the agency ap-
18 proves of and disapproves of; and

19 (ii) a timeline for implementation of
20 the recommendations approved by the head
21 of the agency under clause (i).

22 **SEC. 205. POWERS OF THE COMMISSION.**

23 (a) HEARINGS.—The Commission may hold such
24 hearings, sit and act at such times and places, take such

1 testimony, and receive such evidence as the Commission
2 considers advisable to carry out this title.

3 (b) POSTAL SERVICES.—The Commission may use
4 the United States mails in the same manner and under
5 the same conditions as other departments and agencies of
6 the Federal Government.

7 (c) SPACE FOR USE OF COMMISSION.—

8 (1) IN GENERAL.—Not later than 60 days after
9 the date of enactment of this Act, the Administrator
10 of General Services shall support on a reimbursable
11 basis the operations of the Commission, including
12 the identification of suitable space to house the
13 Commission.

14 (2) LEASE.—If the Administrator is not able to
15 make such suitable space available within the 60-day
16 period described in paragraph (1), the Commission
17 shall lease space to the extent that funds are avail-
18 able.

19 **SEC. 206. COMMISSION PERSONNEL MATTERS.**

20 (a) COMPENSATION OF MEMBERS.—Each member of
21 the Commission shall be compensated at a rate equal to
22 the daily equivalent of the annual rate of basic pay pre-
23 scribed for level IV of the Executive Schedule under sec-
24 tion 5315 of title 5, United States Code, for each day (in-

1 cluding travel time) during which such member is engaged
2 in the performance of the duties of the Commission.

3 (b) TRAVEL EXPENSES.—The members of the Com-
4 mission shall be allowed travel expenses, including per
5 diem in lieu of subsistence, at rates authorized for employ-
6 ees of agencies under subchapter I of chapter 57 of title
7 5, United States Code, while away from their homes or
8 regular places of business in the performance of services
9 for the Commission.

10 (c) STAFF.—The Chair of the Commission may ap-
11 point and terminate an executive director and such other
12 additional personnel as may be necessary to enable the
13 Commission to perform its duties. The employment of an
14 executive director shall be subject to confirmation by the
15 Commission.

16 (d) PROCUREMENT OF TEMPORARY AND INTERMIT-
17 TENT SERVICES.—The Chair of the Commission may pro-
18 cure temporary and intermittent services under section
19 3109(b) of title 5, United States Code, at rates for individ-
20 uals which do not exceed the daily equivalent of the annual
21 rate of basic pay prescribed for level V of the Executive
22 Schedule under section 5316 of such title.

23 (e) CONTRACTING AUTHORITY.—The Commission
24 may acquire administrative supplies and equipment for
25 Commission use to the extent funds are available.

1 (f) ADMINISTRATIVE SUPPORT.—Upon the request of
2 the Commission, the Administrator of General Services
3 shall provide to the Commission, on a reimbursable basis,
4 the administrative support services necessary for the Com-
5 mission to carry out its responsibilities under this Act.

6 **SEC. 207. TERMINATION OF THE COMMISSION.**

7 The Commission shall terminate 90 days after the
8 date on which the Commission submits the final report
9 required under section 204(f).

10 **SEC. 208. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) IN GENERAL.—There are authorized to be appro-
12 priated such sums as may be necessary to the Commission
13 to carry out this title.

14 (b) AVAILABILITY.—Any sums appropriated under
15 the authorization contained in this section shall remain
16 available, without fiscal year limitation, until the termi-
17 nation of the Commission.

18 **SEC. 209. GAO REPORT.**

19 Not later than 18 months after the date on which
20 the Commission submits the final report required under
21 section 204(f), the Government Accountability Office shall
22 issue a report to Congress on the effectiveness of the final
23 report on streamlining regulatory standards within the
24 transportation sector and make a recommendation on
25 what other sectors, if any, could be expected to benefit

1 from a similar evaluation and report conducted by a com-
2 mission.

3 **TITLE III—PLAIN WRITING ACT**
4 **FOR REGULATIONS**

5 **SEC. 301. SHORT TITLE.**

6 This title may be cited as the “Plain Writing Act for
7 Regulations Act of 2017”.

8 **SEC. 302. PURPOSE.**

9 The purpose of this title is to require that Federal
10 regulations use plain writing, to enhance public under-
11 standing of regulations, and to increase the level of public
12 participation in the rulemaking process.

13 **SEC. 303. DEFINITIONS.**

14 In this title:

15 (1) AGENCY.—The term “agency”—

16 (A) means an Executive agency, as defined
17 in section 105 of title 5, United States Code;
18 and

19 (B) does not include an agency that is re-
20 quired to comply with section 722 of the
21 Gramm-Leach-Bliley Act (12 U.S.C. 4809).

22 (2) DIRECTOR.—The term “Director” means
23 the Director of the Office of Management and Budg-
24 et.

1 (3) PLAIN WRITING.—The term “plain writing”
2 means writing that is clear, concise, and well-orga-
3 nized, and follows other best practices appropriate to
4 the subject or field and intended audience.

5 (4) REGULATION.—The term “regulation”
6 means a rule, as defined in section 551 of title 5,
7 United States Code, that is issued by an agency.

8 (5) RULEMAKING.—The term “rulemaking” has
9 the meaning given the term in section 551 of title
10 5, United States Code.

11 **SEC. 304. RESPONSIBILITIES OF FEDERAL AGENCIES.**

12 (a) PREPARATION FOR IMPLEMENTATION OF PLAIN
13 WRITING REQUIREMENTS FOR REGULATIONS.—

14 (1) IN GENERAL.—Not later than 9 months
15 after the date of enactment of this Act, the head of
16 each agency shall—

17 (A) designate a senior official within the
18 agency to oversee the implementation of this
19 title by the agency;

20 (B) ensure that the obligation of the agen-
21 cy to use plain writing in no way diminishes the
22 ability of the agency to perform scientific anal-
23 yses or technical analyses, or disclose scientific
24 data or technical data or any other findings,
25 that are required to be performed or disclosed

1 under subchapter II of chapter 5 of title 5,
2 United States Code, or any other provision of
3 law;

4 (C) communicate the requirements of this
5 title to the employees of the agency;

6 (D) train employees of the agency to write
7 regulations using plain writing;

8 (E) establish a process for overseeing the
9 ongoing compliance of the agency with the re-
10 quirements of this title; and

11 (F) designate an employee of the agency to
12 serve as a point of contact to receive and re-
13 spond to public input on—

14 (i) the implementation of this title by
15 the agency; and

16 (ii) the agency reports required under
17 section 306.

18 (2) INDIVIDUALS DESIGNATED.—The individual
19 designated under subparagraph (A) or (F) of para-
20 graph (1) may be the same individual designated to
21 carry out similar functions under the Plain Writing
22 Act of 2010 (5 U.S.C. 301 note).

23 (b) REQUIREMENT TO USE PLAIN WRITING IN NEW
24 AND REVISED REGULATIONS.—Not later than 12 months
25 after the date of enactment of this Act, each agency shall

1 use plain writing to the extent feasible and in accordance
2 with the guidance issued by the Director under the Plain
3 Writing Act of 2010 (5 U.S.C. 301 note) in each proposed
4 or final regulation issued or substantially revised by the
5 agency.

6 (c) CERTIFICATION OF COMPLIANCE.—For each pro-
7 posed or final regulation issued by an agency, the head
8 of the agency shall certify to the Director that the rule-
9 making documents relating to the regulation use plain
10 writing.

11 (d) EXEMPTION FROM CERTAIN INFORMATION COL-
12 LECTION PROVISIONS.—An agency action to collect infor-
13 mation from the public about a regulation is exempt from
14 the information collection provisions of sections 3506(c)
15 and 3507 of title 44, United States Code, if the head of
16 the agency certifies that the sole reason for the informa-
17 tion collection is to improve the clarity of the regulation
18 in accordance with this title.

19 **SEC. 305. RESPONSIBILITIES OF THE DIRECTOR OF THE OF-**
20 **FICE OF MANAGEMENT AND BUDGET.**

21 (a) GUIDANCE.—

22 (1) IN GENERAL.—Not later than 6 months
23 after the date of enactment of this Act, the Director
24 shall develop and issue guidance on implementing
25 the requirements of this title that ensures that the

1 head of each agency understands that the obligation
2 of the agency to use plain writing does not in any
3 way diminish the ability of the agency to perform
4 scientific analyses or technical analyses, or disclose
5 scientific data or technical data or any other find-
6 ings, that are required to be performed or disclosed
7 by chapter 5 of title 5, United States Code, or any
8 other provision of law.

9 (2) LEAD AGENCY AND INTERAGENCY WORKING
10 GROUPS.—The Director may designate a lead agen-
11 cy, and may use interagency working groups to as-
12 sist in developing and issuing the guidance under
13 paragraph (1).

14 (b) PUBLICATION OF CERTIFICATIONS.—The Direc-
15 tor shall publish each certification required under section
16 304(c) on the official website of the Office of Management
17 and Budget.

18 **SEC. 306. REPORTS.**

19 (a) INITIAL REPORT.—Not later than 9 months after
20 the date of enactment of this Act, the head of each agency
21 shall publish on the plain writing section of the website
22 of the agency created under the Plain Writing Act of 2010
23 (5 U.S.C. 301 note) a report that describes the agency
24 plan for compliance with the requirements of this title.

1 (b) ANNUAL COMPLIANCE REPORT.—Not later than
2 18 months after the date of enactment of this Act, and
3 annually thereafter, the head of each agency shall publish
4 on the plain writing section of the website of the agency
5 a report on the compliance of the agency with the require-
6 ments of this title.

7 (c) GAO REPORT.—Not later than 18 months after
8 the date of enactment of this Act, and annually thereafter,
9 the Comptroller General of the United States shall submit
10 a report to the Committee on Homeland Security and Gov-
11 ernmental Affairs of the Senate and the Committee on
12 Oversight and Government Reform of the House of Rep-
13 resentatives that—

14 (1) evaluates the extent to which regulations
15 use plain writing, by conducting a survey of different
16 intended audiences for a representative sample of
17 major regulations that measures—

18 (A) the level of comprehension of each re-
19 spondent for each regulation; and

20 (B) the satisfaction of each respondent
21 with the plain writing used in each regulation,
22 focusing on whether the regulation uses writing
23 that is clear, concise, and well-organized, and
24 follows other best practices appropriate to the

1 subject or field and intended audience of the
2 regulation;

3 (2) assesses the extent to which plain writing
4 helped increase the level of public participation in
5 the rulemaking process; and

6 (3) provides recommendations to—

7 (A) improve compliance with the require-
8 ments of this title; and

9 (B) better use plain writing to enhance
10 public understanding of regulations and in-
11 crease public participation in the rulemaking
12 process.

13 **SEC. 307. JUDICIAL REVIEW AND ENFORCEABILITY.**

14 (a) **JUDICIAL REVIEW.**—There shall be no judicial re-
15 view of compliance or noncompliance with any provision
16 of this title.

17 (b) **ENFORCEABILITY.**—No provision of this title may
18 be construed to create any right or benefit, substantive
19 or procedural, enforceable by any administrative or judi-
20 cial action.

21 **TITLE IV—OIRA TRANSPARENCY**

22 **SEC. 401. SHORT TITLE.**

23 This title may be cited as the “Office of Information
24 and Regulatory Affairs Transparency Act of 2017”.

1 **SEC. 402. DEFINITIONS.**

2 In this title:

3 (1) ADMINISTRATOR.—The term “Adminis-
4 trator” means the Administrator of OIRA.

5 (2) AGENCY.—The term “agency” has the
6 meaning given the term in section 551 of title 5,
7 United States Code.

8 (3) COVERED INDIVIDUAL.—The term “covered
9 individual” means—

10 (A) an individual who is not employed by
11 the Federal Government; or

12 (B) an individual who is—

13 (i) employed by the Federal Govern-
14 ment; and

15 (ii) a representative of a Federal Gov-
16 ernment entity that may be regulated by a
17 regulatory action under review by OIRA.

18 (4) OIRA.—The term “OIRA” means the Of-
19 fice of Information and Regulatory Affairs, as de-
20 fined in section 551 of title 5, United States Code,
21 as added by section 102 of this Act.

22 (5) REGULATORY ACTION.—The term “regu-
23 latory action” means any substantive action by an
24 agency that promulgates or is expected to lead to the
25 promulgation of a final rule, including a notice of in-

1 quiry, an advanced notice of proposed rulemaking,
2 and a notice of proposed rulemaking.

3 (6) **RULE; RULEMAKING.**—The terms “rule”
4 and “rulemaking” have the meanings given those
5 terms in section 551 of title 5, United States Code.

6 **SEC. 403. PURPOSE.**

7 The purpose of this title is to ensure greater open-
8 ness, accessibility, and accountability in the regulatory re-
9 view process.

10 **SEC. 404. TRANSPARENCY.**

11 Except as otherwise provided by law or required by
12 a court—

13 (1) the Administrator shall—

14 (A) ensure that in all substantive commu-
15 nications between OIRA personnel and covered
16 individuals relating to a regulatory action under
17 review by OIRA—

18 (i) a representative from the agency
19 issuing the regulatory action shall be in-
20 vited to any meeting between OIRA per-
21 sonnel and any covered individual; and

22 (ii) all written communications, re-
23 gardless of format, between OIRA per-
24 sonnel and covered individuals are for-
25 warded to the agency issuing the regu-

1 latory action not later than 10 working
2 days after receiving the date on which
3 OIRA receives the written communication;
4 and

5 (B) maintain a publicly available log that
6 shall contain, with respect to each regulatory
7 action under review by OIRA—

8 (i) the status of the regulatory action,
9 including if input from the President or
10 the Vice President was requested, and if
11 so, when and by whom;

12 (ii) a log of all written communica-
13 tions forwarded to the agency issuing the
14 regulatory action under subparagraph
15 (A)(ii); and

16 (iii) information on each substantive
17 oral communication between OIRA per-
18 sonnel and any covered individual, includ-
19 ing meetings and telephone conversations,
20 relating to the regulatory action, which
21 shall include—

22 (I) the name of each covered in-
23 dividual involved in the oral commu-
24 nication;

1 (II) the date of the oral commu-
2 nication; and

3 (III) a summary of all sub-
4 stantive matters discussed during the
5 oral communication; and

6 (2) after a final rule of an agency is published
7 in the Federal Register or otherwise issued to the
8 public by an agency, the agency shall—

9 (A) make available to the public the draft
10 proposed rule initially provided to OIRA for re-
11 view;

12 (B) identify for the public the substantive
13 changes between the draft proposed rule sub-
14 mitted to OIRA and the final rule; and

15 (C) identify for the public those changes in
16 the final rule that were made at the suggestion
17 or recommendation of OIRA.

18 **TITLE V—COST-BENEFIT**
19 **ANALYSIS IMPROVEMENT**

20 **SEC. 501. SHORT TITLE.**

21 This title shall be cited as the “Cost-Benefit Analysis
22 Improvement Act of 2017”.

23 **SEC. 502. DEFINITIONS.**

24 In this title:

1 (1) AGENCY; MAJOR RULE; RULE; RULE-
2 MAKING.—The terms “agency”, “major rule”,
3 “rule”, “rulemaking” have the meanings given those
4 terms in section 551 of title 5, United States Code.

5 (2) NATIONAL ACADEMY.—The term “National
6 Academy” means the National Academy of Public
7 Administration.

8 **SEC. 503. COST-BENEFIT STUDY.**

9 (a) IN GENERAL.—Not later than 30 days after the
10 date of enactment of this Act, the Administrator of Gen-
11 eral Services shall contract with the National Academy to
12 publish a study of cost-benefits analyses to—

13 (1) conduct a review of cost-benefit analyses to
14 determine—

15 (A) how effective the analyses were at an-
16 ticipating the costs, benefits, and other and im-
17 pacts of major rules;

18 (B) what improvements could be made to
19 achieve more accurate analyses going forward;
20 and

21 (C) best practices for retrospective assess-
22 ments of rules to be used as a model framework
23 in future rulemakings as outlined under 553(i)
24 of title 5, United States Code, as added by sec-
25 tion 103 of this Act; and

1 (2) issue the report required under subsection
2 (c).

3 (b) SCOPE OF STUDY.—The study required under
4 subsection (a)(1) shall—

5 (1) review, based on recommendations from the
6 public and agencies, existing documentation as of
7 the date of enactment of this Act on the costs and
8 benefits associated with 20 major rules for which a
9 cost-benefit analysis was conducted from across the
10 regulatory spectrum that have been in effect for not
11 less than 10 years;

12 (2) with respect to each major rule reviewed in
13 the study, include a comparison of the cost-benefit
14 analysis prepared by the agency that promulgated
15 the major rule with—

16 (A) an analysis of the criticism of the cost-
17 benefit analysis by the proponents and oppo-
18 nents of the major rule during the rulemaking;

19 (B) what opponents and proponents of the
20 major rule predicted would be the cost and ben-
21 efits of the major rule; and

22 (C) as of the date on which the study is
23 conducted, the cost and benefits of the imple-
24 mentation of the major rule; and

1 (3) review key factors for the accurate analysis
2 of costs and benefits and best practices for the ret-
3 rospective assessment of rules issued after the date
4 of enactment of this Act.

5 (c) REPORT.—Not later than 18 months after the
6 date on which the Administrator of General Services con-
7 tracts with the National Academy under subsection (a),
8 the National Academy shall submit to Congress and the
9 President a report that contains—

10 (1) the findings of the study conducted under
11 subsection (a)(1);

12 (2) model frameworks for agency assessments
13 under section 553(i) of title 5, United States Code;
14 and

15 (3) any recommendations the National Acad-
16 emy determines are necessary or desirable.