

118TH CONGRESS
1ST SESSION

S. 1615

To improve agency rulemaking, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 16, 2023

Mr. LANKFORD (for himself, Mr. THUNE, Mr. JOHNSON, and Mr. MARSHALL)
introduced the following bill; which was read twice and referred to the
Committee on Homeland Security and Governmental Affairs

A BILL

To improve agency rulemaking, 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.**

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

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) ‘major guidance’ means guidance that the
16 Administrator finds is—

17 “(A) likely to lead to—

18 “(i) an annual effect on the economy
19 of \$100,000,000 or more;

20 “(ii) a major increase in costs or
21 prices for consumers, individual industries,
22 Federal, State, local, or Tribal government
23 agencies, or geographic regions; or

24 “(iii) significant adverse effects on
25 competition, employment, investment, pro-

1 ductivity, innovation, public health and
2 safety, or the ability of United States-
3 based enterprises to compete with foreign-
4 based enterprises in domestic and export
5 markets; or

6 “(B) a departure from a prior statutory in-
7 terpretation or agency policy;

8 “(17) ‘major rule’ means any rule that the Ad-
9 ministrator determines is likely to—

10 “(A) cause an annual effect on the econ-
11 omy of \$100,000,000 or more;

12 “(B) cause a major increase in costs or
13 prices for consumers, individual industries, Fed-
14 eral, State, local, or Tribal government agen-
15 cies, or geographic regions;

16 “(C) cause significant adverse effects on
17 competition, employment, investment, produc-
18 tivity, innovation, public health and safety, or
19 the ability of United States-based enterprises to
20 compete with foreign-based enterprises in do-
21 mestic and export markets; or

22 “(D) raise novel legal or policy issues aris-
23 ing out of legal mandates;

24 “(18) ‘Office of Information and Regulatory Af-
25 fairs’ means the office established under section

1 3503 of title 44 and any successor to that office;
 2 and

3 “(19) ‘Administrator’ means the Administrator
 4 of the Office of Information and Regulatory Af-
 5 fairs.”.

6 **SEC. 3. RULEMAKING.**

7 Section 553 of title 5, United States Code, is amend-
 8 ed—

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

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

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

14 (3) by striking subsections (b) through (e) and
 15 inserting the following:

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

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

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

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

6 “(4) A reasonable number of alternatives for or
7 to a new rule, with the consideration of 3 alter-
8 natives presumed to be reasonable, that—

9 “(A) meet the objectives of the statutory
10 provision on which the rulemaking relies, in-
11 cluding substantial alternatives or other re-
12 sponses identified by the agency or by inter-
13 ested persons; and

14 “(B) consider not only mandating par-
15 ticular conduct or manners of compliance, but
16 also—

17 “(i) specifying performance objectives;

18 “(ii) establishing economic incentives,
19 including marketable permits, to encourage
20 desired behavior;

21 “(iii) establishing disclosure require-
22 ments that will provide information upon
23 which choices can be made by the public;
24 or

1 “(iv) adopting other means of meeting
2 the objectives of the statutory provision on
3 which the rulemaking relies without man-
4 dating particular conduct or manners of
5 compliance.

6 “(5) For any major rule, unless prohibited by
7 law, the potential costs and benefits associated with
8 potential alternative rules and other responses con-
9 sidered under paragraph (4), including quantitative
10 and qualitative analyses of—

11 “(A) the direct costs and benefits, with
12 costs and benefits measured over equal time pe-
13 riods;

14 “(B) the nature and degree of risks ad-
15 dressed by the rule and the countervailing risks
16 that might be posed by agency action; and

17 “(C) to the extent practicable, the cumu-
18 lative costs and benefits, and an analysis of the
19 effects that the rule is anticipated to have on
20 entities that purchase products or services
21 from, sell products or services to, or otherwise
22 conduct business with entities to which the rule
23 will apply.

24 “(c) NOTICE OF PROPOSED RULEMAKING.—

1 “(1) IN GENERAL.—If an agency determines
2 that the objectives of the agency require the agency
3 to issue a rule, the agency shall—

4 “(A) submit a notice of proposed rule-
5 making to the Administrator for review;

6 “(B) refrain from publishing the notice
7 until the Administrator concludes the review
8 under subparagraph (A); and

9 “(C) at the conclusion of review by the Ad-
10 ministrator, publish a notice of proposed rule-
11 making in the Federal Register, which shall in-
12 clude—

13 “(i) a statement of the time, place,
14 and nature of any public rulemaking pro-
15 ceedings;

16 “(ii) a reference to the legal authority
17 under which the rule is proposed, including
18 the specific statutory provision on which
19 the rulemaking relies;

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

21 “(iv) a summary of information
22 known to the agency concerning the con-
23 siderations described in subsection (b); and

24 “(v) where otherwise consistent with
25 applicable law, for any major rule—

1 “(I) a reasoned preliminary ex-
2 planation regarding how—

3 “(aa) the proposed rule
4 meets the objectives of the statu-
5 tory provision on which the rule-
6 making relies; and

7 “(bb) the benefits of the
8 proposed rule justify the costs;

9 “(II) a discussion of—

10 “(aa) the costs and benefits
11 of alternatives considered by the
12 agency under subsection (b)(4);

13 “(bb) whether the alter-
14 natives considered by the agency
15 under subsection (b)(4) meet the
16 objectives of the statutory provi-
17 sion on which the rulemaking re-
18 lies; and

19 “(cc) the reasons why the
20 agency did not propose an alter-
21 native considered by the agency
22 under subsection (b)(4); and

23 “(III) a solicitation of public
24 comment, including on all issues and
25 alternatives discussed under sub-

1 clauses (I) and (II) and subsection
2 (k)(1)(A).

3 “(2) ACCESSIBILITY.—

4 “(A) IN GENERAL.—Not later than the
5 date on which an agency publishes a notice of
6 proposed rulemaking under paragraph (1), all
7 studies, models, scientific literature, and other
8 information developed or relied upon by the
9 agency, and actions taken by the agency to ob-
10 tain that information, in connection with the
11 determination of the agency to propose the rule
12 that is the subject of the rulemaking shall be
13 placed in the docket for the proposed rule and
14 made accessible to the public.

15 “(B) INFORMATION CONTROLLED BY NON-
16 GOVERNMENTAL PERSON.—With respect to any
17 information to which a nongovernmental person
18 holds a legal right to prohibit or limit reproduc-
19 tion, distribution, or public display, the infor-
20 mation shall be—

21 “(i) placed in the docket through cita-
22 tion or incorporation by reference, includ-
23 ing a specification of the identity of the
24 nongovernmental person who holds a legal
25 right to prohibit or limit reproduction, dis-

1 tribution, or public display of the informa-
2 tion and the means by which a member of
3 the public may request a full copy of the
4 information from that holder; and

5 “(ii) considered made accessible to the
6 public after a placement described in
7 clause (i), provided that the nongovern-
8 mental person who holds a legal right to
9 prohibit or limit reproduction, distribution,
10 or public display of the information makes
11 the information reasonably available upon
12 request in a timely manner to any member
13 of the public who requests a copy of the in-
14 formation.

15 “(C) EXCEPTION.—Subparagraphs (A)
16 and (B) shall not apply with respect to informa-
17 tion that is exempt from disclosure under sec-
18 tion 552(b).

19 “(3) INFORMATION QUALITY.—If an agency
20 proposes a rule that rests upon scientific, technical,
21 or economic information, the agency shall—

22 “(A) propose the rule on the basis of the
23 best publicly available scientific, technical, or
24 economic information; and

1 “(B) to the maximum extent practicable,
2 use that information in compliance with the
3 guidelines issued under section 515 of the
4 Treasury and General Government Appropria-
5 tions Act, 2001 (Public Law 106–554; 114
6 Stat. 2763A–154).

7 “(4) PUBLIC COMMENT.—

8 “(A) IN GENERAL.—After publishing a no-
9 tice of proposed rulemaking under paragraph
10 (1), an agency shall provide interested persons
11 an opportunity to participate in the rulemaking
12 through the submission of written material,
13 data, views, or arguments with or without op-
14 portunity for oral presentation, except that
15 when a rule is required by statute to be made
16 on the record after opportunity for an agency
17 hearing, sections 556 and 557 shall apply.

18 “(B) TIMELINE.—

19 “(i) IN GENERAL.—Subject to sub-
20 paragraph (C), an agency shall provide not
21 less than 60 days, or, with respect to a
22 proposed major rule, not less than 90 days,
23 for interested persons to submit written
24 material, data, views, or arguments under
25 subparagraph (A).

1 “(ii) ADEQUATE REVIEW PERIOD.—If
2 a proposed rule relies on information
3 placed in the docket through citation or in-
4 corporation by reference as described in
5 paragraph (3)(B), the comment period re-
6 quired under clause (i) shall be adequate
7 to allow interested persons to receive and
8 review that information to inform their
9 submission.

10 “(C) RESPONSIVE COMMENT PERIOD FOR
11 MAJOR RULES.—With respect to a proposed
12 major rule, an interested person who made a
13 submission under subparagraph (A) during the
14 comment period under subparagraph (B) with
15 respect to the rule may, during the period be-
16 ginning on the day after the date on which that
17 comment period closes and ending on the date
18 that is 30 days after that day, respond to any
19 other submission made by any other interested
20 person under subparagraph (A) during the ini-
21 tial comment period.

22 “(D) ACCESSIBILITY.—All comments and
23 responses submitted under this paragraph shall
24 be promptly placed in the docket and made ac-
25 cessible to the public.

1 “(5) CHANGE OF CLASSIFICATION AFTER PUB-
2 LICATION OF NOTICE.—If, after an agency submits
3 for review and publishes the notice of proposed rule-
4 making required under paragraph (1), a proposed
5 rule is determined to be a major rule, the agency
6 shall—

7 “(A) publish a notice in the Federal Reg-
8 ister with respect to the change of the classi-
9 fication of the rule; and

10 “(B) allow interested persons an additional
11 opportunity of not less than 30 days to com-
12 ment on—

13 “(i) the rule; and

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

16 “(6) PROHIBITION ON CERTAIN COMMUNICA-
17 TIONS.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), after an agency publishes a
20 notice of proposed rulemaking required under
21 paragraph (1), or after an agency publishes a
22 notice of initiation of rulemaking under sub-
23 section (d)(1)(B), the agency, and any indi-
24 vidual acting in an official capacity on behalf of
25 the agency, may not communicate, and a person

1 who receives Federal funds from the agency
2 may not use those funds to communicate,
3 through written, oral, electronic, or other
4 means, to the public with respect to the pro-
5 posed rule in a manner that—

6 “(i) directly advocates, in support of
7 or against the proposed rule, for the sub-
8 mission of information that will form part
9 of the record for the proposed rule;

10 “(ii) appeals to the public, or solicits
11 a third party, to undertake advocacy in
12 support of or against the proposed rule; or

13 “(iii) is directly or indirectly for the
14 purpose of publicity or propaganda within
15 the United States in a manner that Con-
16 gress has not authorized.

17 “(B) EXCEPTION.—The prohibition under
18 subparagraph (A) shall not apply to a commu-
19 nication that requests comments on, or provides
20 information regarding, a proposed rule in an
21 impartial manner.

22 “(d) ADVANCED NOTICE OF PROPOSED RULE-
23 MAKING FOR MAJOR RULES.—

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

4 “(A) establish an electronic docket for that
5 rulemaking, which may have a physical counter-
6 part; and

7 “(B) publish an advanced notice of pro-
8 posed rulemaking in the Federal Register,
9 which shall, at a minimum—

10 “(i) briefly describe the nature and
11 significance of the problem the agency may
12 address with the rule, including any data
13 or categories of data that the agency has
14 identified as relevant or that the agency in-
15 tends to consult for the rule;

16 “(ii) refer to the legal authority under
17 which the rule would be proposed, includ-
18 ing the specific statutory provision that au-
19 thORIZES the rulemaking;

20 “(iii) invite interested persons to pro-
21 pose alternatives and other ideas regarding
22 how best to accomplish the objectives of
23 the agency in the most effective manner;

24 “(iv) solicit written data, views, and
25 arguments from interested persons con-

1 cerning the information and issues identi-
2 fied in the advanced notice;

3 “(v) provide for a period of not less
4 than 30 days for interested persons to sub-
5 mit written data, views, and arguments de-
6 scribed in clause (iv) to the agency; and

7 “(vi) appear in the Federal Register
8 not later than 90 days before the date on
9 which the agency publishes a notice of pro-
10 posed rulemaking for the rule.

11 “(2) ACCESSIBILITY.—All information provided
12 to the agency under paragraph (1) shall be promptly
13 placed in the docket and made accessible to the pub-
14 lic, unless the information—

15 “(A) is information to which the submitter
16 does not hold a legal right to authorize disclo-
17 sure; or

18 “(B) is exempt from disclosure under sec-
19 tion 552(b).

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

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

1 “(i) the agency receiving the alter-
2 natives and other ideas; and

3 “(ii) the public; and

4 “(B) the agency receiving the alternatives
5 and other ideas may respond to the alternatives
6 and other ideas.

7 “(4) TIMETABLE.—

8 “(A) IN GENERAL.—After considering any
9 written material submitted by interested per-
10 sons under paragraph (1), if an agency deter-
11 mines to proceed with a rulemaking for a major
12 rule, the agency proposing the rule shall estab-
13 lish a timetable for the rulemaking that—

14 “(i) contains intermediate completion
15 dates for actions of the agency, includ-
16 ing—

17 “(I) the anticipated date on
18 which the agency shall publish the no-
19 tice required under subsection (c)(1)
20 with respect to the rule; and

21 “(II) the duration of the com-
22 ment period required under subsection
23 (c)(4), including the date on which the
24 comment period shall end; and

1 “(ii) includes a final completion date
2 for actions by the agency.

3 “(B) PUBLICATION.—The timetable re-
4 quired under subparagraph (A) shall be pub-
5 lished in the electronic docket established under
6 paragraph (1)(A) with respect to the rule-
7 making.

8 “(C) CONSIDERATION OF FACTORS.—In
9 establishing the timetable required under sub-
10 paragraph (A), an agency shall consider rel-
11 evant factors, including—

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

14 “(ii) the resources available to the
15 agency;

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

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

20 “(D) REPORT REQUIRED.—

21 “(i) IN GENERAL.—An agency that
22 fails to meet an intermediate or final com-
23 pletion date for an action established under
24 subparagraph (A) shall submit to Congress
25 and the Director of the Office of Manage-

1 ment and Budget a report regarding why
2 the agency failed to meet the completion
3 date.

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

7 “(I) include an amended time-
8 table for the rulemaking; and

9 “(II) be published—

10 “(aa) in the Federal Reg-
11 ister; and

12 “(bb) in the electronic dock-
13 et established under paragraph
14 (1)(A) with respect to the rule-
15 making.

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

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

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

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

6 “(A) IN GENERAL.—If, after publishing
7 the notice required under paragraph (1), an
8 agency determines not to issue a major rule,
9 the agency shall—

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

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

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

18 “(i) a description of the alternative re-
19 sponse the agency has determined to
20 adopt; and

21 “(ii) if the agency intends to issue a
22 rule, any information required under sub-
23 section (c).

24 “(e) FINAL RULES.—

25 “(1) NET BENEFITS OF MAJOR RULE.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), in a rulemaking for a major
3 rule, an agency shall adopt the alternative con-
4 sidered under subsection (b)(5) that best mini-
5 mizes costs while maximizing net benefits, tak-
6 ing into consideration only the costs and bene-
7 fits that arise within the scope of the statutory
8 provision that authorizes the rulemaking.

9 “(B) EXCEPTIONS.—In a rulemaking for a
10 major rule, an agency may adopt an alternative
11 other than as required under subparagraph (A)
12 only if—

13 “(i) the Administrator approves the
14 adoption by the agency of the alternative;
15 and

16 “(ii) the alternative is adopted to—

17 “(I) account for costs or benefits
18 that cannot be quantified, including
19 costs or benefits related to constitu-
20 tional or civil rights, provided that the
21 agency identifies all such costs and
22 benefits and explains why those costs
23 and benefits justify the adoption of
24 the alternative; or

1 “(II) achieve additional benefits
2 or cost reductions, provided that the
3 agency—

4 “(aa) identifies—

5 “(AA) all such addi-
6 tional benefits and the asso-
7 ciated costs of those bene-
8 fits; and

9 “(BB) all such cost re-
10 ductions and the associated
11 benefits of those cost reduc-
12 tions; and

13 “(bb) explains why—

14 “(AA) the additional
15 benefits justify the addi-
16 tional costs; or

17 “(BB) the additional
18 cost reductions justify any
19 benefits foregone.

20 “(C) RULE OF CONSTRUCTION.—Nothing
21 in subparagraph (A) may be construed to pre-
22 clude an agency from including in an alter-
23 native adopted pursuant to such subparagraph
24 changes made as a result of agency analysis or
25 review performed under chapter 6 of this title.

1 “(2) PUBLICATION OF NOTICE OF FINAL RULE-
2 MAKING.—After submitting a final rule to the Ad-
3 ministrator for review and obtaining a certification
4 from the Administrator that the review has con-
5 cluded, the agency shall publish a notice of final
6 rulemaking in the Federal Register, which shall in-
7 clude—

8 “(A) a concise, general statement of the
9 basis and purpose of the rule and a reference
10 to the legal authority under which the rule is
11 made, including the specific statutory provision
12 on which the rulemaking relies;

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

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

18 “(D) the internet address of a summary of
19 not more than 100 words in length of the pro-
20 posed rule, in plain language, that shall be
21 posted on the internet website under section
22 206(d) of the E-Government Act of 2002 (44
23 U.S.C. 3501 note) (commonly known as regula-
24 tions.gov); and

1 “(E) with respect to a major rule, a rea-
2 soned determination by the agency that—

3 “(i) the benefits of the rule advance
4 the relevant objectives of the statutory pro-
5 vision on which the rulemaking relies and
6 justify the costs of the rule; and

7 “(ii)(I) no other alternative considered
8 would achieve the relevant objectives of the
9 statutory provision on which the rule-
10 making relies in a manner that more
11 greatly maximizes net benefits as required
12 under paragraph (1)(A); or

13 “(II) the adoption by the agency of a
14 more costly or less costly rule complies
15 with paragraph (1)(B).

16 “(3) INFORMATION QUALITY.—If an agency
17 rulemaking rests upon scientific, technical, or eco-
18 nomic information, the agency shall—

19 “(A) adopt a final rule on the basis of the
20 best reasonably available scientific, technical, or
21 economic information; and

22 “(B) to the maximum extent practicable,
23 use that information in compliance with the
24 guidelines issued under section 515 of the
25 Treasury and General Government Appropria-

1 tions Act, 2001 (Public Law 106–554; 114
2 Stat. 2763A–154).

3 “(4) ACCESSIBILITY.—

4 “(A) IN GENERAL.—Not later than the
5 date on which an agency publishes a notice of
6 final rulemaking under paragraph (2), all stud-
7 ies, models, scientific literature, and other in-
8 formation developed or relied upon by the agen-
9 cy, and actions taken by the agency to obtain
10 that information, in connection with the deter-
11 mination of the agency to finalize the rule that
12 is the subject of the rulemaking shall be placed
13 in the docket for the rule and made accessible
14 to the public.

15 “(B) INFORMATION CONTROLLED BY NON-
16 GOVERNMENTAL PERSON.—With respect to any
17 information to which a nongovernmental person
18 holds a legal right to prohibit or limit reproduc-
19 tion, distribution, or public display, the infor-
20 mation shall be—

21 “(i) placed in the docket through cita-
22 tion or incorporation by reference, includ-
23 ing a specification of the identity of the
24 nongovernmental person who holds a legal
25 right to prohibit or limit reproduction, dis-

1 tribution, or public display of the informa-
2 tion and the means by which a member of
3 the public may request a full copy of the
4 information from that holder; and

5 “(ii) considered made accessible to the
6 public after a placement described in
7 clause (i), provided that the nongovern-
8 mental person who holds a legal right to
9 prohibit or limit reproduction, distribution,
10 or public display of the information makes
11 the information reasonably available upon
12 request in a timely manner.

13 “(C) EXCEPTION.—Subparagraphs (A)
14 and (B) shall not apply with respect to informa-
15 tion that is exempt from disclosure under sec-
16 tion 552(b).

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

19 “(A) IN GENERAL.—During the 60-day pe-
20 riod beginning on a transitional inauguration
21 day (as defined in section 3349a), with respect
22 to any final rule that had been placed on file
23 for public inspection by the Office of the Fed-
24 eral Register or published in the Federal Reg-
25 ister as of the date of the inauguration, but

1 which had not become effective by the date of
2 the transitional inauguration day, the agency
3 issuing the rule may, by order, delay the effec-
4 tive date of the rule for not more than 90 days
5 for the purpose of obtaining public comment on
6 whether—

7 “(i) the rule should be amended or re-
8 scinded; or

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

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

16 “(f) APPLICABILITY.—

17 “(1) PRIMACY OF CERTAIN RULEMAKING CON-
18 SIDERATIONS AND PROCEDURES IN OTHER FEDERAL
19 LAWS.—

20 “(A) CONSIDERATIONS.—If a rulemaking
21 is authorized under a Federal law that requires
22 an agency to consider, or prohibits an agency
23 from considering, a factor in a manner that is
24 inconsistent with, or that conflicts with, the re-
25 quirements under this section, for the purposes

1 of this section, the requirement or prohibition,
2 as applicable, in that other Federal law shall
3 apply to the agency in the rulemaking.

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

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

18 “(3) EXCEPTIONS FOR GOOD CAUSE.—

19 “(A) FINDING OF GOOD CAUSE.—

20 “(i) IN GENERAL.—If an agency for
21 good cause finds that compliance with sub-
22 section (c), (d), or (e)(2)(B) before issuing
23 a final rule is unnecessary, impracticable,
24 or contrary to the public interest, that sub-
25 section shall not apply and the agency may

1 issue the final rule or an interim final rule,
2 as applicable, under subparagraph (B) or
3 (C).

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

11 “(B) DIRECT FINAL RULES.—

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

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

24 “(II) establish a comment period
25 of not less than 30 days for any inter-

1 ested person to submit written mate-
2 rial, data, views, or arguments with
3 respect to the final rule; and

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

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

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

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

20 “(II) complete rulemaking in ac-
21 cordance with subsections (c) through
22 (e), as applicable.

23 “(C) INTERIM FINAL RULES.—

24 “(i) IN GENERAL.—If an agency for
25 good cause finds that compliance with sub-

1 section (c), (d), or (e)(2)(B) before issuing
2 a final rule is impracticable or contrary to
3 the public interest, the agency shall issue
4 an interim final rule by—

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

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

16 “(ii) INTERIM PERIOD.—

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

21 “(aa) rescind the interim
22 rule;

23 “(bb) initiate rulemaking in
24 accordance with subsections (c)
25 through (e); or

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

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

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

17 “(5) RULE OF CONSTRUCTION.—Nothing in
18 this subsection shall be construed to modify, alter, or
19 abridge exclusive rights held pursuant to title 17.

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

14 “(1) ASSESSMENT OF RULES.—

15 “(A) IN GENERAL.—The Administrator
16 shall establish guidelines regarding rulemaking
17 as follows:

18 “(i) IDENTIFICATION OF NEED FOR
19 RULES.—Guidelines setting forth how
20 needs for rulemaking should be identified,
21 including—

22 “(I) whether rulemaking is made
23 necessary by compelling public need,
24 such as material failures of private
25 markets or public institutions to pro-

1 tect or improve the health and safety
2 of the public, the environment, or the
3 well-being of the public; and

4 “(II) whether rulemaking needs
5 could be lessened by reliance on po-
6 tential State, local, Tribal, or regional
7 regulatory action or other responses
8 that could be taken in lieu of agency
9 action.

10 “(ii) ASSESSMENT OF RULES.—Guide-
11 lines setting forth how the assessment, in-
12 cluding the quantitative and qualitative as-
13 sessment, of proposed and final rules
14 should occur, including how to determine—

15 “(I) the costs and benefits of
16 proposed and final rules and alter-
17 natives to them, including quantifiable
18 and non-quantifiable costs and bene-
19 fits;

20 “(II) whether proposed and final
21 rules maximize net benefits;

22 “(III) estimated impacts on jobs,
23 wages, competition, innovation, and
24 low-income populations;

1 “(IV) other economic issues that
2 are relevant to rulemaking under this
3 section or other sections of this part;
4 and

5 “(V) risk assessments that are
6 relevant to rulemaking under this sec-
7 tion and other sections of this part.

8 “(iii) NUMBERS OF ALTERNATIVES.—
9 Guidelines regarding when it may be rea-
10 sonable to consider in a rulemaking more
11 alternatives than the number presumed to
12 be reasonable under subsection (b)(4).

13 “(iv) ADOPTION OF ALTERNATIVES
14 FOR MAJOR RULES.—Guidelines regarding
15 when it may be appropriate, in a rule-
16 making for a major rule, to adopt an alter-
17 native final rule under subsection
18 (e)(1)(B).

19 “(v) ADMINISTRATOR REVIEW.—
20 Guidelines regarding the efficient submis-
21 sion and review of proposed and final rules
22 under subsections (c)(1) and (e)(2).

23 “(B) AGENCY ANALYSIS OF RULES.—

24 “(i) IN GENERAL.—The rigor of the
25 cost-benefit analysis required or rec-

1 ommended by the guidelines established
2 under subparagraph (A) shall be commen-
3 surate, as determined by the Adminis-
4 trator, with the economic impact of a rule.

5 “(ii) RISK ASSESSMENT GUIDE-
6 LINES.—Guidelines for a risk assessment
7 described in subparagraph (A)(iv) shall in-
8 clude criteria for—

9 “(I) selecting studies and models;

10 “(II) evaluating and weighing
11 evidence; and

12 “(III) conducting peer reviews.

13 “(C) UPDATING GUIDELINES.—Not less
14 frequently than once every 10 years, the Ad-
15 ministrators shall update the guidelines estab-
16 lished under subparagraph (A) to enable each
17 agency to use the best available techniques to
18 identify, quantify, and evaluate the need for
19 rulemaking and present and future benefits,
20 costs, other economic issues, and risks as objec-
21 tively and accurately as practicable.

22 “(2) SIMPLIFICATION OF RULES.—

23 “(A) ISSUANCE OF GUIDELINES.—The Ad-
24 ministrators shall issue guidelines to promote co-

1 ordination, simplification, and harmonization of
2 agency rules during the rulemaking process.

3 “(B) REQUIREMENTS.—The guidelines
4 issued by the Administrator under subpara-
5 graph (A) shall advise each agency to—

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

10 “(ii) draft the rules of the agency to
11 be simple and easy to understand, with the
12 goal of minimizing the potential for uncer-
13 tainty and litigation arising from the un-
14 certainty.

15 “(3) CONSISTENCY IN RULEMAKING.—

16 “(A) IN GENERAL.—To promote consist-
17 ency in rulemaking, the Administrator shall
18 issue guidelines to ensure that rulemaking con-
19 ducted in whole or in part under procedures
20 specified in provisions of law other than those
21 under this section conform with the procedures
22 set forth in this section to the fullest extent al-
23 lowed by law.

24 “(B) AGENCY ADOPTION OF REGULA-
25 TIONS.—Each agency shall adopt regulations

1 for the conduct of hearings consistent with the
2 guidelines issued under this paragraph.

3 “(j) AGENCY GUIDANCE; PROCEDURES TO ISSUE
4 MAJOR GUIDANCE; AUTHORITY TO ISSUE GUIDELINES
5 FOR ISSUANCE OF GUIDANCE.—

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

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

10 “(B) state that the guidance is not legally
11 binding by including the phrase ‘The contents
12 of this document to not have the force and ef-
13 fect of law and do not, of themselves, bind the
14 public or the agency. This document is intended
15 only to provide clarity to the public regarding
16 existing requirements under the law or agency
17 policies.’ on the first page of the document; and

18 “(C) be published in a single location on
19 an internet website designated by the Director
20 at the time the guidance is issued.

21 “(2) PROCEDURES TO ISSUE MAJOR GUID-
22 ANCE.—Before issuing any major guidance, an agen-
23 cy shall make and document a reasoned determina-
24 tion that—

1 “(A) such guidance is understandable and
2 complies with relevant statutory objectives and
3 regulatory provisions; and

4 “(B) identifies the costs and benefits, in-
5 cluding all costs and benefits to be considered
6 during a rulemaking as required under sub-
7 section (b), of requiring conduct conforming to
8 such guidance and assures that such benefits
9 justify such costs.

10 “(3) ISSUANCE OF UPDATED GUIDANCE.—

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

14 “(B) REQUIREMENTS.—The guidelines
15 issued by the Administrator under subpara-
16 graph (A) shall advise each agency—

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

21 “(ii) to draft the guidance documents
22 of the agency to be simple and easy to un-
23 derstand, with the goal of minimizing the
24 potential for uncertainty and litigation
25 arising from the uncertainty; and

1 “(iii) how to develop and implement a
2 strategy to ensure the proper use of guid-
3 ance by the agency.

4 “(k) MAJOR RULE FRAMEWORKS.—

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

9 “(A) a proposed major rule, the agency
10 shall include a potential framework for assess-
11 ing the rule, which shall include a general state-
12 ment of how the agency intends to measure the
13 effectiveness of the rule; or

14 “(B) a final major rule, the agency shall
15 include a framework for assessing the rule
16 under paragraph (2), which shall include—

17 “(i) a clear statement of the regu-
18 latory objectives of the rule, including a
19 summary of the benefit and cost of the
20 rule;

21 “(ii) the methodology by which the
22 agency plans to analyze the rule, including
23 metrics by which the agency can meas-
24 ure—

1 “(I) the effectiveness and bene-
2 fits of the rule in producing the regu-
3 latory objectives of the rule; and

4 “(II) the impacts, including any
5 costs, of the rule on regulated and
6 other impacted entities;

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

14 “(iv) a specific timeframe, as appro-
15 priate to measure the full impact of the
16 rule but not more than 10 years after the
17 effective date of the rule, under which the
18 agency shall conduct the assessment of the
19 rule in accordance with paragraph (2)(A).

20 “(2) ASSESSMENT.—

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

1 final major rule to better determine whether the
2 regulatory objective was achieved, with respect
3 to the rule—

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

8 “(ii) to determine whether—

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

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

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

16 “(bb) whether the rule over-
17 laps, duplicates, or conflicts
18 with—

19 “(AA) other rules; or

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

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

1 “(IV) other alternatives to the
2 rule or modification of the rule could
3 better achieve the regulatory objective
4 while imposing a smaller burden on
5 society or increase cost-effectiveness,
6 taking into consideration any cost al-
7 ready incurred.

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 (D) an expla-
14 nation of the changes in circumstances that ne-
15 cessitated the use of that other methodology.

16 “(C) SUBSEQUENT ASSESSMENTS.—

17 “(i) IN GENERAL.—Except as pro-
18 vided in clause (ii), if, after an assessment
19 of a major rule under subparagraph (A),
20 an agency determines that the rule will re-
21 main in effect with or without modifica-
22 tion, the agency shall—

23 “(I) determine a specific time, as
24 appropriate to the rule and not more
25 than 10 years after the date on which

1 the agency completes the assessment,
2 under which the agency shall conduct
3 another assessment of the rule in ac-
4 cordance with subparagraph (A); and

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

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

19 “(D) PUBLICATION.—Not later than 180
20 days after the date on which an agency com-
21 pletes an assessment of a major rule under sub-
22 paragraph (A), the agency shall publish a notice
23 of availability of the results of the assessment
24 in the Federal Register, including the specific

1 time for any subsequent assessment of the rule
2 under subparagraph (C)(i), if applicable.

3 “(3) OIRA OVERSIGHT.—The Administrator
4 shall—

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

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

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

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

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

17 “(D) ensure that agencies streamline and
18 coordinate the assessment of major rules with
19 similar or related regulatory 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,

1 or contrary to the public interest, as described
2 in subsection (f)(3)(A)(i); and

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

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

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

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

18 “(5) APPLICABILITY.—

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

21 “(i) a major rule of an agency—

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

1 “(II) 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 “(III) 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) guidance;

12 “(iii) routine and administrative rules;

13 or

14 “(iv) a rule that is reviewed under
15 section 2222 of the Economic Growth and
16 Regulatory Paperwork Reduction Act of
17 1996 (12 U.S.C. 3311).

18 “(B) DIRECT AND INTERIM FINAL MAJOR
19 RULE.—In the case of a major rule of an agen-
20 cy for which the agency is not required to issue
21 a notice of proposed rulemaking in response to
22 an emergency or a statutorily imposed deadline,
23 the agency shall publish the framework required
24 under paragraph (1)(B) in the Federal Register

1 not later than 180 days after the date on which
2 the agency publishes the rule.

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

11 “(7) JUDICIAL REVIEW.—

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

15 “(i) published the framework for as-
16 sessment of a major rule in accordance
17 with paragraph (1); or

18 “(ii) completed and published the re-
19 quired assessment of a major rule in ac-
20 cordance with subparagraphs (A) and (D)
21 of paragraph (2).

22 “(B) REMEDY AVAILABLE.—In granting
23 relief in an action brought under subparagraph
24 (A), a court may only issue an order remanding
25 the major rule to the agency to comply with

1 paragraph (1) or subparagraph (A) or (D) of
2 paragraph (2), as applicable.

3 “(C) EFFECTIVE DATE OF MAJOR RULE.—

4 If, in an action brought under subparagraph
5 (A)(i), a court determines that the agency did
6 not comply, the major rule shall take effect not-
7 withstanding any order issued by the court.

8 “(1) AUTHORITIES AND RESPONSIBILITIES OF THE
9 OFFICE OF INFORMATION AND REGULATORY AFFAIRS.—

10 “(1) IN GENERAL.—The Administrator shall
11 provide meaningful guidance and oversight, which
12 may include review by the Office of Information and
13 Regulatory Affairs, to ensure that each agency
14 issues rules in accordance with the requirements
15 under this section and other applicable law and do
16 not conflict with the policies or actions of another
17 agency.

18 “(2) NOTIFICATION.—If the Administrator de-
19 termines that a major rule of an agency does not
20 comply with the principles and requirements of this
21 section, is not consistent with other applicable laws,
22 or conflicts with the policies or actions of another
23 agency, the Administrator shall—

24 “(A) identify areas of noncompliance;

25 “(B) notify the agency; and

1 “(C) request that the agency comply before
2 the agency finalizes the major rule concerned.

3 “(3) ANNUAL STATEMENT TO CONGRESS ON
4 AGENCY COMPLIANCE.—The Administrator shall
5 submit to Congress, including the Committee on
6 Homeland Security and Governmental Affairs of the
7 Senate and the Committee on Oversight and Ac-
8 countability of the House of Representatives, an an-
9 nual written report that, for the 1-year period pre-
10 ceding the report—

11 “(A) details compliance by each agency
12 with the requirements of this section that relate
13 to major rules, including activities undertaken
14 at the request of the Administrator to improve
15 compliance; and

16 “(B) contains an appendix detailing com-
17 pliance by each agency.

18 “(m) RULE OF CONSTRUCTION.—Nothing in this sec-
19 tion shall be construed to limit the scope of the authority
20 of the Office of Information and Regulatory Affairs under
21 subchapter I of chapter 35 of title 44, section 515 of the
22 Treasury and General Government Appropriations Act,
23 2001 (Public Law 106–554; 114 Stat. 2763A–154), chap-
24 ter 8 of this title, or any other law or Executive Order.”.

1 **SEC. 4. SCOPE OF REVIEW.**

2 Section 706 of title 5, United States Code, is amend-
3 ed—

4 (1) in the first sentence of the matter preceding
5 paragraph (1), by striking “To the extent nec-
6 essary” and inserting the following:

7 “(a) IN GENERAL.—To the extent necessary”; and

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

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

11 (B) in paragraph (2), in the matter pre-
12 ceding subparagraph (A), by inserting “, or,
13 when appropriate, remand a matter to an agen-
14 cy without setting aside,” after “set aside”; and

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

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

22 “(c) PRECLUSION OF REVIEW.—

23 “(1) IN GENERAL.—Any action or inaction of
24 the Administrator under subchapter II of chapter 5,
25 except sections 552 and 552a, shall not be subject
26 to judicial review.

1 “(2) RULE OF CONSTRUCTION.—The preclusion
2 of judicial review under this subsection shall not be
3 construed or used to construe any other provision of
4 law to provide any cause of action against the Ad-
5 ministrator, except as explicitly provided by law.

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

9 “(e) AGENCY INTERPRETATION OF RULES.—

10 “(1) STANDARD OF REVIEW.—Unless expressly
11 required otherwise by statute, the reviewing court
12 shall decide all questions of law de novo, with due
13 regard for the views of the agency administering the
14 statute and any other agency involved in the decision
15 making process.

16 “(2) WEIGHT.—The weight that a reviewing
17 court gives an interpretation by an agency of a rule
18 of that agency shall depend on the thoroughness evi-
19 dent in the consideration of the rule by the agency,
20 the validity of the reasoning of the agency, and the
21 consistency of the interpretation with earlier and
22 later pronouncements.”.

23 **SEC. 5. ADDED DEFINITIONS.**

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

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

3 (2) in paragraph (2)—

4 (A) by inserting “‘guidance,’” after “‘re-
5 lief,’”; and

6 (B) by striking the period at the end and
7 inserting “; and”; and

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

9 “(3) ‘substantial evidence’ means such relevant
10 evidence, including the quality and quantity, as a rea-
11 sonable mind might accept as adequate to support a
12 conclusion in light of the record considered as a
13 whole.”.

14 **SEC. 6. APPLICATION.**

15 The amendments made by this Act to sections 553,
16 701(b), and 706 of title 5, United States Code, shall not
17 apply to any rulemaking, as defined in section 551 of title
18 5, United States Code, as amended by section 2 of this
19 Act, that is pending or completed as of the date of enact-
20 ment of this Act.

21 **SEC. 7. RULE OF CONSTRUCTION WITH RESPECT TO COPY-**
22 **RIGHTS.**

23 Nothing in this Act, or in the amendments made by
24 this Act, may be construed as altering, modifying, or

1 abridging an exclusive right granted under title 17, United
2 States Code.

3 **SEC. 8. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) ALASKA NATIONAL INTEREST LANDS CONSERVA-
5 TION ACT.—Section 1002(g)(2) of the Alaska National In-
6 terest Lands Conservation Act (16 U.S.C. 3142(g)(2)) is
7 amended, in the third sentence, by striking “section
8 706(2)(E)” and inserting “section 706(a)(2)(E)”.

9 (b) ANTARCTIC MARINE LIVING RESOURCES CON-
10 VENTION ACT OF 1984.—Section 308(c) of the Antarctic
11 Marine Living Resources Convention Act of 1984 (16
12 U.S.C. 2437(c)) is amended, in the third sentence, by
13 striking “section 706(2)(E)” and inserting “section
14 706(a)(2)(E)”.

15 (c) CONGRESSIONAL ACCOUNTABILITY ACT OF
16 1995.—Section 409 of the Congressional Accountability
17 Act of 1995 (2 U.S.C. 1409) is amended, in the first sen-
18 tence—

19 (1) by striking “section 706(2)” and inserting
20 “section 706(a)(2)”; and

21 (2) by striking “section 706(2)(B)” and insert-
22 ing “section 706(a)(2)(B)”.

23 (d) CONSUMER PRODUCT SAFETY ACT.—Section 9(i)
24 of the Consumer Product Safety Act (15 U.S.C. 2058(i))

1 is amended, in the first sentence, by striking “section
2 553(e)” and inserting “section 553(h)”.

3 (e) DEEP SEABED HARD MINERAL RESOURCES
4 ACT.—Section 302(b) of the Deep Seabed Hard Mineral
5 Resources Act (30 U.S.C. 1462(b)) is amended, in the
6 third sentence, by striking “section 706(2)(E)” and in-
7 serting “section 706(a)(2)(E)”.

8 (f) DEFENSE PRODUCTION ACT OF 1950.—Section
9 709(b)(1) of the Defense Production Act of 1950 (50
10 U.S.C. 4559(b)(1)) is amended by striking “for not less
11 than 30 days, consistent with the requirements of section
12 553(b)” and inserting “in a manner consistent with the
13 requirements of section 553(e)”.

14 (g) ENDANGERED SPECIES ACT OF 1973.—Section
15 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C.
16 1533(b)(3)) is amended—

17 (1) in subparagraph (A), in the first sentence,
18 by striking “section 553(e)” and inserting “section
19 553(h)”;

20 (2) in subparagraph (D)(i), in the first sen-
21 tence, by striking “section 553(e)” and inserting
22 “section 553(h)”.

23 (h) EXPEDITED FUNDS AVAILABILITY ACT.—Section
24 609(a) of the Expedited Funds Availability Act (12 U.S.C.
25 4008(a)) is amended, in the matter preceding paragraph

1 (1), by striking “section 553(c)” and inserting “section
2 553”.

3 (i) FASTENER QUALITY ACT.—Section 6(b)(3) of the
4 Fastener Quality Act (15 U.S.C. 5408(b)(3)) is amended,
5 in the second sentence, by striking “section 706(2)” and
6 inserting “section 706(a)(2)”.

7 (j) FEDERAL FOOD, DRUG, AND COSMETIC ACT.—
8 Section 912(b) of the Federal Food, Drug, and Cosmetic
9 Act (21 U.S.C. 387l(b)) is amended, in the second sen-
10 tence, by striking “section 706(2)(A)” and inserting “sec-
11 tion 706(a)(2)(A)”.

12 (k) FEDERAL HAZARDOUS SUBSTANCES ACT.—Sec-
13 tion 3 of the Federal Hazardous Substances Act (15
14 U.S.C. 1262) is amended—

15 (1) in subsection (e)(1), in the first sentence, by
16 striking “(other than clause (B) of the last sentence
17 of subsection (b) of such section) of title 5 of the
18 United States Code” and inserting “of title 5,
19 United States Code, other than subsection (f)(3) of
20 such section,”; and

21 (2) in subsection (j), in the first sentence, by
22 striking “section 553(e)” and inserting “section
23 553(h)”.

1 (l) FEDERAL TRADE COMMISSION ACT.—Section
2 18(e) of the Federal Trade Commission Act (15 U.S.C.
3 57a(e)) is amended—

4 (1) in paragraph (3), in the second sentence of
5 the matter preceding subparagraph (A), by striking
6 “section 706(2)” and inserting “section 706(a)(2)”;
7 and

8 (2) in paragraph (5)(C), in the second sentence,
9 by striking “Section 706(2)(E)” and inserting “Sec-
10 tion 706(a)(2)(E)”.

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

13 (1) in section 4(k) (15 U.S.C. 1193(k)), in the
14 first sentence, by striking “section 553(e)” and in-
15 serting “section 553(h)”;

16 (2) in section 16(c)(2) (15 U.S.C. 1203(c)(2)),
17 by striking “section 553(b)” and inserting “section
18 553(c)”.

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

24 (o) HIGH SEAS FISHING COMPLIANCE ACT OF
25 1995.—Section 108(d) of the High Seas Fishing Compli-

1 ance Act of 1995 (16 U.S.C. 5507(d)) is amended, in the
2 third sentence, by striking “section 706(2)” and inserting
3 “section 706(a)(2)”.

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

7 (1) in section 643(b)(3) (42 U.S.C.
8 13603(b)(3)), in the first sentence, by striking
9 “(notwithstanding subsections (a)(2), (b)(B), and
10 (d)(3) of such section)” and inserting “(notwith-
11 standing subsections (a)(2), (f)(3), and (g)(2) of
12 such section)”; and

13 (2) in section 685 (42 U.S.C. 13643), in the
14 second sentence, by striking “(notwithstanding sub-
15 sections (a)(2), (b)(B), and (d)(3) of such section)”
16 and inserting “(notwithstanding subsections (a)(2),
17 (f)(3), and (g)(2) of such section)”.

18 (q) INTERNATIONAL BANKING ACT OF 1978.—Sec-
19 tion 7(f)(2) of the International Banking Act of 1978 (12
20 U.S.C. 3105(f)(2)) is amended by striking “paragraph
21 (2)(F)” and inserting “subsection (a)(2)(F)”.

22 (r) MAGNUSON-STEVENSON FISHERY CONSERVATION
23 AND MANAGEMENT ACT.—Section 308(b) of the Magnu-
24 son-Stevens Fishery Conservation and Management Act
25 (16 U.S.C. 1858(b)) is amended, in the third sentence,

1 by striking “section 706(2)” and inserting “section
2 706(a)(2)”.

3 (s) MARINE MAMMAL PROTECTION ACT OF 1972.—
4 Section 109 of the Marine Mammal Protection Act of
5 1972 (16 U.S.C. 1379) is amended—

6 (1) in subsection (c)(4), in the first sentence, by
7 striking “section 706(2) (A) through (E) of Title”
8 and inserting “subparagraphs (A) through (E) of
9 section 706(a)(2) of title”; and

10 (2) in subsection (d)(2), in the second sen-
11 tence—

12 (A) by striking “Title” and inserting
13 “title”; and

14 (B) by striking “subsection (d) of such sec-
15 tion 553” and inserting “subsection (g) of such
16 section 553”.

17 (t) MCKINNEY-VENTO HOMELESS ASSISTANCE
18 ACT.—Section 433 of the McKinney-Vento Homeless As-
19 sistance Act (42 U.S.C. 11387) is amended, in the second
20 sentence, by striking “(notwithstanding subsections
21 (a)(2), (b)(B), and (d)(3) of such section)” and inserting
22 “(notwithstanding subsections (a)(2), (f)(3), and (g)(2) of
23 such section)”.

24 (u) MIGRANT AND SEASONAL AGRICULTURAL WORK-
25 ER PROTECTION ACT.—The Migrant and Seasonal Agri-

1 cultural Worker Protection Act (29 U.S.C. 1801 et seq.)
2 is amended—

3 (1) in section 103(c) (29 U.S.C. 1813(c)), in
4 the third sentence, by striking “section 706(2)(E)”
5 and inserting “section 706(a)(2)(E)”; and

6 (2) in section 503(c) (29 U.S.C. 1853(c)), in
7 the third sentence, by striking “section 706(2)(E)”
8 and inserting “section 706(a)(2)(E)”.

9 (v) MILWAUKEE RAILROAD RESTRUCTURING ACT.—

10 The Milwaukee Railroad Restructuring Act (45 U.S.C.
11 901 et seq.) is amended—

12 (1) in section 5(b)(2) (45 U.S.C. 904(b)(2)), in
13 the second sentence, by striking “sections 706(2)(A),
14 706(2)(B), 706(2)(C), and 706(2)(D) of title 5 of
15 the United States Code” and inserting “subpara-
16 graphs (A), (B), (C), and (D) of section 706(a)(2)
17 of title 5, United States Code”; and

18 (2) in section 17(b)(2) (45 U.S.C. 915(b)(2)),
19 in the second sentence, by striking “sections
20 706(2)(A), 706(2)(B), 706(2)(C), and 706(2)(D) of
21 title 5 of the United States Code” and inserting
22 “subparagraphs (A), (B), (C), and (D) of section
23 706(a)(2) of title 5, United States Code”.

1 (w) NATIVE AMERICAN PROGRAMS ACT OF 1974.—
2 Section 814 of the Native American Programs Act of 1974
3 (42 U.S.C. 2992b-1) is amended—

4 (1) in subsection (b)—

5 (A) in paragraph (1), in the matter pre-
6 ceding subparagraph (A), by striking “Subpara-
7 graph (A) of the last sentence of section 553(b)
8 of title 5, United States Code, shall not apply
9 with respect to any interpretative rule or gen-
10 eral statement of policy” and inserting “Section
11 553(c) of title 5, United States Code, shall
12 apply with respect to guidance”;

13 (B) in paragraph (2)—

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

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

21 (C) in paragraph (3), in the matter pre-
22 ceding subparagraph (A)—

23 (i) by striking “The first 2 sentences
24 of section 553(b)” and inserting “Section
25 553(c)”; and

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

4 (2) in subsection (c)—

5 (A) in the matter preceding paragraph
6 (1)—

7 (i) by striking “section 553(d)” and
8 inserting “section 553(g)”; and

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

12 (B) in the flush text following paragraph
13 (2), by striking “the first 2 sentences of section
14 553(b)” and inserting “section 553(c)”;

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

18 (4) in subsection (e)—

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

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

24 (5) in subsection (f)—

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

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

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

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

10 (x) NATURAL GAS POLICY ACT OF 1978.—Section
11 502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C.
12 3412(b)) is amended, in the third sentence, by striking
13 “section 553(d)(3)” and inserting “section 553(g)(2)”.

14 (y) NOISE CONTROL ACT OF 1972.—Section 6(e)(2)
15 of the Noise Control Act of 1972 (42 U.S.C. 4905(e)(2))
16 is amended by striking “the first sentence of section
17 553(e)” and inserting “section 553(e)(4)”.

18 (z) NORTHEAST RAIL SERVICE ACT OF 1981.—Sec-
19 tion 1152(c) of the Northeast Rail Service Act of 1981
20 (45 U.S.C. 1105(c)) is amended by striking “paragraphs
21 (2) (A), (B), (C), and (D) of section 706, title 5” and
22 inserting “subparagraphs (A) through (D) of section
23 706(a)(2) of title 5”.

24 (aa) NORTHERN PACIFIC HALIBUT ACT OF 1982.—
25 Section 8(b) of the Northern Pacific Halibut Act of 1982

1 (16 U.S.C. 773f(b)) is amended, in the third sentence, by
2 striking “section 706(2)” and inserting “section
3 706(a)(2)”.

4 (bb) POISON PREVENTION PACKAGING ACT OF
5 1970.—The Poison Prevention Packaging Act of 1970 (15
6 U.S.C. 1471 et seq.) is amended—

7 (1) in section 5 (15 U.S.C. 1474)—

8 (A) in subsection (a), in the first sentence,
9 by striking “(other than paragraph (3)(B) of
10 the last sentence of subsection (b) of such sec-
11 tion) of title 5 of the United States Code” and
12 inserting “of title 5, United States Code, other
13 than subsection (f)(3) of such section,”; and

14 (B) in subsection (b)—

15 (i) by striking “of the United States
16 Code” each place that term appears and
17 inserting “, United States Code”; and

18 (ii) in paragraph (3), in the first sen-
19 tence, by striking “paragraph (2) of sec-
20 tion 706” and inserting “section
21 706(a)(2)”; and

22 (2) in section 7(c)(2) (15 U.S.C. 1476(c)(2)),
23 by striking “section 553(b)” and inserting “section
24 553(c)”.

1 (cc) POULTRY PRODUCTS INSPECTION ACT.—Section
2 14(c) of the Poultry Products Inspection Act (21 U.S.C.
3 463(c)) is amended by striking “section 553(c) of title 5,
4 United States Code” and inserting “section 553(c)(4) of
5 title 5, United States Code,”.

6 (dd) PUBLIC HEALTH SERVICE ACT.—Section
7 2723(b)(2)(E)(iii) of the Public Health Service Act (42
8 U.S.C. 300gg–22(b)(2)(E)(iii)) is amended by striking
9 “section 706(2)(E)” and inserting “section
10 706(a)(2)(E)”.

11 (ee) REGIONAL RAIL REORGANIZATION ACT OF
12 1973.—Section 216(c)(3) of the Regional Rail Reorga-
13 nization Act of 1973 (45 U.S.C. 726(c)(3)) is amended,
14 in the fourth sentence, by striking “section 706(2)” and
15 inserting “section 706(a)(2)”.

16 (ff) SOCIAL SECURITY ACT.—The Social Security Act
17 (42 U.S.C. 301 et seq.) is amended—

18 (1) in section 221(j) (42 U.S.C. 421(j)), in the
19 flush text following paragraph (3), by striking “in
20 accordance with section 553(b)(A) of title 5, United
21 States Code” and all that follows through “and
22 statements” and inserting “in accordance with sec-
23 tion 553(f)(2) of title 5, United States Code, of
24 guidance or rules of agency organization, procedure,

1 or practice relating to consultative examinations if
2 such guidance and rules”; and

3 (2) in section 1871(b)(2) (42 U.S.C.
4 1395hh(b)(2)), by striking subparagraph (C) and in-
5 serting the following:

6 “(C) subsection (c) of section 553 of title
7 5, United States Code, does not apply pursuant
8 to subsection (f)(3) of such section.”.

9 (gg) SOUTH PACIFIC TUNA ACT OF 1988.—Section
10 8(b) of the South Pacific Tuna Act of 1988 (16 U.S.C.
11 973f(b)) is amended, in the third sentence, by striking
12 “section 706(2)” and inserting “section 706(a)(2)”.

13 (hh) TARIFF ACT OF 1930.—Section 777(f)(5) of the
14 Tariff Act of 1930 (19 U.S.C. 1677f(f)(5)) is amended,
15 in the third sentence, by striking “section 706(2)” and
16 inserting “section 706(a)(2)”.

17 (ii) TITLE 5, UNITED STATES CODE.—Title 5,
18 United States Code, is amended—

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

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

24 (3) in section 562(11), by striking “means ‘rule
25 making’ as that term is defined in section 551(5)”

1 and inserting “has the meaning given the term in
2 section 551”;

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

5 (5) in section 1103(b)(1), by striking “section
6 553(b)(1), (2), and (3)” and inserting “section
7 553(c)”;

8 (6) in section 1105, by striking “subsections
9 (b), (c), and (d)” and inserting “subsections (b)
10 through (g) and (i)”.

11 (jj) TITLE 11, UNITED STATES CODE.—Section
12 1172(b) of title 11, United States Code, is amended, in
13 the second sentence, by striking “sections 706(2)(A),
14 706(2)(B), 706(2)(C), and 706(2)(D) of title 5” and in-
15 serting “subparagraphs (A), (B), (C), and (D) of section
16 706(a)(2) of title 5”.

17 (kk) TITLE 14, UNITED STATES CODE.—Section
18 2507(b)(2)(A) of title 14, United States Code, is amended
19 by striking “section 706(1)” and inserting “section
20 706(a)(1)”.

21 (ll) TITLE 28, UNITED STATES CODE.—Section 3902
22 of title 28, United States Code, is amended, in the first
23 sentence, by striking “section 706(2)” and inserting “sec-
24 tion 706(a)(2)”.

1 (mm) TITLE 41, UNITED STATES CODE.—Section
2 8503(a)(2) of title 41, United States Code, is amended
3 by striking “section 553(b) to (e)” and inserting “section
4 553”.

5 (nn) TITLE 46, UNITED STATES CODE.—Title 46,
6 United States Code, is amended—

7 (1) in section 14104(b), in the second sentence,
8 by striking “shall be considered to be an interpretive
9 regulation for purposes of section 553 of title 5” and
10 inserting “shall be subject to section 553 of title 5”;
11 and

12 (2) in section 70105(c)(3)(B), in the second
13 sentence, by striking “section 706(2)(E)” and in-
14 serting “section 706(a)(2)(E)”.

15 (oo) TOXIC SUBSTANCES CONTROL ACT.—Section
16 19(c)(1)(B) of the Toxic Substances Control Act (15
17 U.S.C. 2618(c)(1)(B)) is amended—

18 (1) in clause (i)—

19 (A) in subclause (I), by striking “para-
20 graph (2)(E)” and inserting “subsection
21 (a)(2)(E)”; and

22 (B) in subclause (II), by striking “para-
23 graph (2)(E)” and inserting “subsection
24 (a)(2)(E)”; and

1 (2) in clause (ii), by striking “section 553(c)”
2 and inserting “section 553(e)(2)”.

3 (pp) UNFUNDED MANDATES REFORM ACT OF
4 1995.—Section 401(a)(2)(A) of the Unfunded Mandates
5 Reform Act of 1995 (2 U.S.C. 1571(a)(2)(A)) is amended
6 by striking “section 706(1)” and inserting “section
7 706(a)(1)”.

8 (qq) UNITED STATES WAREHOUSE ACT.—Section
9 13(d)(2) of the United States Warehouse Act (7 U.S.C.
10 252(d)(2)) is amended by striking “section 706(2)” and
11 inserting “section 706(a)(2)”.

○