

115TH CONGRESS  
1ST SESSION

# S. 69

To codify and modify regulatory requirements of Federal agencies.

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IN THE SENATE OF THE UNITED STATES

JANUARY 9, 2017

Mr. ROBERTS (for himself, Mr. BLUNT, Mr. FLAKE, Mr. CRAPO, and Mr. WICKER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To codify and modify regulatory requirements of Federal agencies.

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 Responsi-  
5 bility for our Economy Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “agency” means—

9 (A) an agency, as defined in 3502(1) of  
10 title 44, United States Code; and

1 (B) an independent regulatory agency, as  
2 defined in section 3502(5) of title 44, United  
3 States Code;

4 (2) the term “regulation”—

5 (A) means an agency statement of general  
6 applicability and future effect, which the agency  
7 intends to have the force and effect of law, that  
8 is designed to implement, interpret, or prescribe  
9 law or policy or to describe the procedure or  
10 practice requirements of an agency; and

11 (B) does not include—

12 (i) regulations issued in accordance  
13 with the formal rule making provisions of  
14 sections 556 and 557 of title 5, United  
15 States Code;

16 (ii) regulations that pertain to a mili-  
17 tary or foreign affairs function of the  
18 United States, other than procurement  
19 regulations and regulations involving the  
20 import or export of non-defense articles  
21 and services; or

22 (iii) regulations that are limited to  
23 agency organization, management, or per-  
24 sonnel matters;

1           (3) the term “regulatory action” means any  
2 substantive action by an agency (normally published  
3 in the Federal Register) that promulgates or is ex-  
4 pected to lead to the promulgation of a final regula-  
5 tion, including notices of inquiry, advance notices of  
6 proposed rulemaking, and notices of proposed rule-  
7 making; and

8           (4) the term “significant regulatory action”  
9 means any regulatory action that is likely to result  
10 in a regulation that may—

11           (A) have an annual effect on the economy  
12 of \$100,000,000 or more or adversely affect in  
13 a material way the economy, a sector of the  
14 economy, productivity, competition, jobs, the  
15 environment, public health or safety, or State,  
16 local, or tribal governments or communities;

17           (B) create a serious inconsistency or other-  
18 wise interfere with an action taken or planned  
19 by another agency;

20           (C) materially alter the budgetary impact  
21 of entitlements, grants, user fees, or loan pro-  
22 grams or the rights and obligation of recipients  
23 thereof;

24           (D) add to the national debt; or

1           (E) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Act.

4 **SEC. 3. AGENCY REQUIREMENTS.**

5       (a) **FEDERAL REGULATORY SYSTEM.**—The Federal  
6 regulatory system shall—

7           (1) protect the public health, welfare, safety,  
8 and the environment of the United States, especially  
9 those promoting economic growth, innovation, competitiveness, and job creation;

11          (2) be based on the best available science and  
12 information;

13          (3) allow for public participation and an open  
14 exchange of ideas;

15          (4) promote predictability and reduce uncertainty, including adherence to a clearly articulated  
16 timeline for the release of regulatory documents at  
17 all stages of the regulatory process;

19          (5) identify and use the best, most innovative,  
20 and least burdensome tools for achieving regulatory  
21 ends;

22          (6) take into account benefits and costs, both  
23 quantitative and qualitative;

1           (7) ensure that regulations are accessible, con-  
2           sistent, written in plain language, and easy to under-  
3           stand; and

4           (8) measure, and seek to improve, the actual re-  
5           sults of regulatory requirements.

6           (b) REQUIREMENTS.—Each agency shall—

7           (1) propose or adopt a regulation only upon a  
8           reasoned determination that the benefits of the regu-  
9           lation justify the costs of the regulation to the extent  
10          permitted by law;

11          (2) tailor regulations of the agency to impose  
12          the least burden on society, consistent with obtain-  
13          ing regulatory objectives, taking into account, among  
14          other things, the costs of cumulative regulations;

15          (3) in choosing among alternative regulatory  
16          approaches, select those approaches that maximize  
17          net benefits, including potential economic, environ-  
18          mental, public health and safety, and other advan-  
19          tages, distributive impacts, and equity;

20          (4) specify performance objectives, rather than  
21          specifying the behavior or manner of compliance  
22          that regulated entities are required to adopt;

23          (5) identify and assess available alternatives to  
24          direct regulation, including providing economic in-  
25          centives to encourage the desired behavior, such as

1 user fees or marketable permits, or providing infor-  
2 mation upon which choices can be made by the pub-  
3 lic; and

4 (6) use the best available techniques to quantify  
5 anticipated present and future benefits and costs.

6 **SEC. 4. PUBLIC PARTICIPATION.**

7 (a) IN GENERAL.—Regulations shall be—

8 (1) adopted through a process that involves  
9 public participation; and

10 (2) based, to the extent consistent with law, on  
11 the open exchange of information and perspectives  
12 among State, local, and tribal officials, experts in  
13 relevant disciplines, affected stakeholders in the pri-  
14 vate sector, and the public as a whole.

15 (b) OPPORTUNITY TO PARTICIPATE.—Each agency  
16 shall—

17 (1) provide the public with an opportunity to  
18 participate in the regulatory process;

19 (2) as authorized by law, afford the public a  
20 meaningful opportunity to comment through the  
21 Internet on any proposed regulation, with a com-  
22 ment period that shall begin on the date on which  
23 the proposed regulation is published in the Federal  
24 Register and be not less than 60 days, unless the  
25 relevant regulation is designated by the Adminis-

1       trator of the Office of Information and Regulatory  
2       Affairs to be an emergency rule;

3           (3) provide, for both proposed and final rules,  
4       timely online access to the rule making docket on  
5       regulations.gov, including relevant scientific and  
6       technical findings, in an open format that can be  
7       easily searched and downloaded; and

8           (4) for proposed rules, provide access to in-  
9       clude, to the extent permitted by law, an opportunity  
10      for public comment on all pertinent parts of the rule  
11      making docket, including relevant scientific and  
12      technical findings.

13      (c) SEEKING AFFECTED PARTIES.—Before issuing a  
14      notice of proposed rule making, each agency shall, where  
15      appropriate, seek the views of those who are likely to be  
16      affected, including those who are likely to benefit from and  
17      those who are potentially subject to such rule making.

18      (d) DELAY OF IMPLEMENTATION.—

19           (1) IN GENERAL.—An agency shall delay imple-  
20      mentation of an interim final rule until final disposi-  
21      tion of a challenge is entered by a court in the  
22      United States, if—

23           (A) the agency excepted the rule from no-  
24      tice and public procedure under section  
25      553(b)(B) of title 5, United States Code; and

1 (B) the agency exception of the rule de-  
2 scribed under paragraph (1) is challenged in a  
3 court in the United States.

4 (2) LENGTH OF DELAY.—If implementation of  
5 an interim final rule is delayed under paragraph (1),  
6 the delay shall continue until a final disposition of  
7 the challenge is entered by the court.

8 **SEC. 5. INTEGRATION AND INNOVATION.**

9 (a) FINDINGS.—Congress finds that—

10 (1) some sectors and industries face a signifi-  
11 cant number of regulatory requirements, some of  
12 which may be redundant, inconsistent, or overlap-  
13 ping; and

14 (2) greater coordination across agencies should  
15 reduce these requirements, thus reducing costs and  
16 simplifying and harmonizing rules.

17 (b) PROMOTION OF INNOVATION.—In developing reg-  
18 ulatory actions and identifying appropriate approaches,  
19 each agency shall—

20 (1) promote coordination, simplification, and  
21 harmonization; and

22 (2) identify means to achieve regulatory goals  
23 that are designed to promote innovation.

1 **SEC. 6. FLEXIBLE APPROACHES.**

2 (a) IN GENERAL.—Each agency shall identify and  
3 consider regulatory approaches that reduce burdens, espe-  
4 cially economic burdens, and maintain flexibility and free-  
5 dom of choice for the public.

6 (b) CONTENTS.—The approaches described under  
7 subsection (a) shall include warnings, appropriate default  
8 rules, disclosure requirements, and the provision of infor-  
9 mation to the public in a form that is clear and intelligible.

10 **SEC. 7. SCIENCE.**

11 Each agency shall ensure the objectivity of any sci-  
12 entific and technological information and processes used  
13 to support the regulatory actions of the agency.

14 **SEC. 8. RETROSPECTIVE ANALYSES OF EXISTING RULES.**

15 (a) RETROSPECTIVE ANALYSES.—

16 (1) IN GENERAL.—To facilitate the periodic re-  
17 view of existing significant regulatory actions, agen-  
18 cies shall consider how best to promote retrospective  
19 analysis of rules that may be outmoded, ineffective,  
20 insufficient, or excessively burdensome, and to mod-  
21 ify, streamline, expand, or repeal such regulations in  
22 accordance with what has been learned.

23 (2) AGREEMENT.—Once every 5 years, each  
24 agency may enter into an agreement with a qualified  
25 private organization to conduct the retrospective  
26 analysis described in paragraph (1) of the agency.

1           (3) PUBLICATION ONLINE.—Any retrospective  
2 analyses conducted under this subsection, including  
3 supporting data, shall be published online.

4           (b) AGENCY PLANS.—

5           (1) PLAN.—

6           (A) IN GENERAL.—Not later than 180  
7 days after the date of enactment of this Act,  
8 each agency shall develop and submit to the ap-  
9 propriate congressional committees a prelimi-  
10 nary plan for reviewing significant regulatory  
11 actions issued by the agency, consistent with  
12 law, under which the agency shall review its ex-  
13 isting significant regulatory actions once every  
14 5 years to determine whether such regulations  
15 should be modified, streamlined, expanded, or  
16 repealed so as to make the regulatory program  
17 of the agency more effective or less burdensome  
18 in achieving the regulatory objectives.

19           (B) REPEAL.—If the plan described in  
20 subparagraph (A) includes suggestions for  
21 needed repeals, a timeline for such repeals shall  
22 also be included in the plan.

23           (2) REPORT.—Upon completion of a review  
24 under a plan submitted under paragraph (1), each

1 agency shall submit to the appropriate congressional  
2 committees a report that—

3 (A) describes the outcome of the review,  
4 including which regulations were modified,  
5 streamlined, expanded, or repealed;

6 (B) describes the reasons for the modifica-  
7 tions, streamlining, expansions, or repeals de-  
8 scribed in subparagraph (A); and

9 (C) in any case where an agency did not  
10 take action, describes the reasons why the agen-  
11 cy did not take action to modify, streamline, ex-  
12 pand, or repeal any significant regulatory ac-  
13 tions.

14 **SEC. 9. JUDICIAL REVIEW.**

15 Any person may file a petition for judicial review of  
16 any agency action required under this Act within the  
17 United States Court of Appeals for the District of Colum-  
18 bia Circuit or for the circuit in which such person resides  
19 or in which such person's principal place of business is  
20 located. Courts of appeals of the United States shall have  
21 exclusive jurisdiction of any action to obtain judicial re-  
22 view (other than in an enforcement proceeding) of such  
23 an action if any district court of the United States would  
24 have had jurisdiction of such action but for this section.

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