

117TH CONGRESS  
1ST SESSION

# S. 2278

To improve agency rulemaking, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 24, 2021

Mr. PORTMAN 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 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”;

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

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

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

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

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

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

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

13           “(16) ‘high-impact rule’ means any rule that  
14     the Administrator determines is likely to cause an  
15     annual effect on the economy of \$500,000,000 or  
16     more, adjusted once every 5 years to reflect in-  
17     creases in the Consumer Price Index for All Urban  
18     Consumers, as published by the Bureau of Labor  
19     Statistics of the Department of Labor;

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

22                 “(A) an annual effect on the economy of  
23     \$100,000,000 or more, adjusted once every 5  
24     years to reflect increases in the Consumer Price  
25     Index for All Urban Consumers, as published

1 by the Bureau of Labor Statistics of the De-  
2 partment of Labor;

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

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

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

15 “(A) an annual effect on the economy of  
16 \$100,000,000 or more, adjusted once every 5  
17 years to reflect increases in the Consumer Price  
18 Index for All Urban Consumers, as published  
19 by the Bureau of Labor Statistics of the De-  
20 partment of Labor;

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

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

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

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

14 **SEC. 3. RULEMAKING.**

15          Section 553 of title 5, United States Code, is amend-  
 16          ed—

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

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

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

22               (3) by striking subsections (b) through (e) and  
 23               inserting the following:

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

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

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

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

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

18           “(A) meet the objectives of the statutory  
19 provision on which the rulemaking relies, in-  
20 cluding substantial alternatives or other re-  
21 sponses identified by the agency or by inter-  
22 ested persons; and

23           “(B) consider not only mandating par-  
24 ticular conduct or manners of compliance, but  
25 also—

1 “(i) specifying performance objectives;

2 “(ii) establishing economic incentives,  
3 including marketable permits, to encourage  
4 desired behavior;

5 “(iii) establishing disclosure require-  
6 ments that will provide information upon  
7 which choices can be made by the public;  
8 or

9 “(iv) adopting other means of meeting  
10 the objectives of the statutory provision on  
11 which the rulemaking relies without man-  
12 dating particular conduct or manners of  
13 compliance.

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

19 “(A) the direct costs and benefits;

20 “(B) the nature and degree of risks ad-  
21 dressed by the rule and the countervailing risks  
22 that might be posed by agency action; and

23 “(C) to the extent practicable, the cumu-  
24 lative costs and benefits, and an analysis of the  
25 effects that the rule is anticipated to have on

1           entities that purchase products or services  
2           from, sell products or services to, or otherwise  
3           conduct business with entities to which the rule  
4           will apply.

5           “(c) NOTICE OF PROPOSED RULEMAKING.—

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

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

11                “(B) refrain from publishing the notice  
12           until the Administrator determines that review  
13           by the Administrator has concluded; and

14                “(C) at the conclusion of review by the Ad-  
15           ministrator, publish a notice of proposed rule-  
16           making in the Federal Register, which shall in-  
17           clude—

18                 “(i) a statement of the time, place,  
19           and nature of any public rulemaking pro-  
20           ceedings;

21                 “(ii) a reference to the legal authority  
22           under which the rule is proposed, including  
23           the specific statutory provision on which  
24           the rulemaking relies;

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

1 “(iv) a summary of information  
 2 known to the agency concerning the con-  
 3 siderations described in subsection (b); and

4 “(v) where otherwise consistent with  
 5 applicable law, for any major rule or high-  
 6 impact rule—

7 “(I) a reasoned preliminary ex-  
 8 planation regarding how—

9 “(aa) the proposed rule  
 10 meets the objectives of the statu-  
 11 tory provision on which the rule-  
 12 making relies; and

13 “(bb) the benefits of the  
 14 proposed rule justify the costs;

15 “(II) a discussion of—

16 “(aa) the costs and benefits  
 17 of alternatives considered by the  
 18 agency under subsection (b)(4);

19 “(bb) whether the alter-  
 20 natives considered by the agency  
 21 under subsection (b)(4) meet the  
 22 objectives of the statutory provi-  
 23 sion on which the rulemaking re-  
 24 lies; and



1 “(cc) the reasons why the  
2 agency did not propose an alter-  
3 native considered by the agency  
4 under subsection (b)(4); and

5 “(III) a solicitation of public  
6 comment, including on all issues and  
7 alternatives discussed under sub-  
8 clauses (I) and (II) and subsection  
9 (l)(1)(A).

10 “(2) ACCESSIBILITY.—

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

22 “(B) INFORMATION CONTROLLED BY NON-  
23 GOVERNMENTAL PERSON.—With respect to any  
24 information to which a nongovernmental person  
25 holds a legal right to prohibit or limit reproduc-

tion, distribution, or public display, the information shall be—

“(i) placed in the docket through citation or incorporation by reference, including a specification of the identity of the nongovernmental person who holds a legal right to prohibit or limit reproduction, distribution, or public display of the information and the means by which a member of the public may request a full copy of the information from that holder; and

“(ii) considered made accessible to the public after a placement described in clause (i), provided that the nongovernmental person who holds a legal right to prohibit or limit reproduction, distribution, or public display of the information makes the information reasonably available upon request in a timely manner to any member of the public who requests a copy of the information.

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

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

4           “(A) propose the rule on the basis of the  
5       best reasonably available scientific, technical, or  
6       economic information; and

7           “(B) to the maximum extent practicable,  
8       use that information in compliance with the  
9       guidelines issued under section 515 of the  
10      Treasury and General Government Appropria-  
11      tions Act, 2001 (Public Law 106–554; 114  
12      Stat. 2763A–154).

13       “(4) PUBLIC COMMENT.—

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

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

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

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

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

9 “(B) TIMELINE.—

10 “(i) IN GENERAL.—Subject to sub-  
11 paragraph (C), an agency shall provide not  
12 less than 60 days, or, with respect to a  
13 proposed major rule or a proposed high-im-  
14 pact rule, not less than 90 days, for inter-  
15 ested persons to submit written material,  
16 data, views, or arguments under subpara-  
17 graph (A).

18 “(ii) ADEQUATE REVIEW PERIOD.—If  
19 a proposed rule relies on information  
20 placed in the docket through citation or in-  
21 corporation by reference as described in  
22 paragraph (3)(B), the comment period re-  
23 quired under clause (i) shall be adequate  
24 to allow interested persons to receive and

1 review that information to inform their  
2 submission.

3 “(C) RESPONSIVE COMMENT PERIOD FOR  
4 MAJOR AND HIGH-IMPACT RULES.—With re-  
5 spect to a proposed major rule or a proposed  
6 high-impact rule, an interested person who  
7 made a submission under subparagraph (A)  
8 during the comment period under subparagraph  
9 (B) with respect to the rule may, during the pe-  
10 riod beginning on the day after the date on  
11 which that comment period closes and ending  
12 on the date that is 30 days after that day, re-  
13 spond to any other submission made by any  
14 other interested person under subparagraph (A)  
15 during the initial comment period.

16 “(D) ACCESSIBILITY.—All comments and  
17 responses submitted under this paragraph shall  
18 be promptly placed in the docket and made ac-  
19 cessible to the public.

20 “(5) CHANGE OF CLASSIFICATION AFTER PUB-  
21 LICATION OF NOTICE.—If, after an agency submits  
22 for review and publishes the notice of proposed rule-  
23 making required under paragraph (1), a proposed  
24 rule is determined to be a major rule or a high-im-  
25 pact rule, the agency shall—

1 “(A) publish a notice in the Federal Reg-  
2 ister with respect to the change of the classi-  
3 fication of the rule; and

4 “(B) allow interested persons an additional  
5 opportunity of not less than 30 days to com-  
6 ment on—

7 “(i) the rule; and

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

10 “(6) PROHIBITION ON CERTAIN COMMUNICA-  
11 TIONS.—

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

1 “(i) directly advocates, in support of  
 2 or against the proposed rule, for the sub-  
 3 mission of information that will form part  
 4 of the record for the proposed rule;

5 “(ii) appeals to the public, or solicits  
 6 a third party, to undertake advocacy in  
 7 support of or against the proposed rule; or

8 “(iii) is directly or indirectly for the  
 9 purpose of publicity or propaganda within  
 10 the United States in a manner that Con-  
 11 gress has not authorized.

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

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

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

23 “(A) establish an electronic docket for that  
 24 rulemaking, which may have a physical counter-  
 25 part; and

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

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

6 “(ii) refer to the legal authority under  
7 which the rule would be proposed, includ-  
8 ing the specific statutory provision that au-  
9 thorizes the rulemaking;

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

14 “(iv) indicate how interested persons  
15 may submit written material for the dock-  
16 et; and

17 “(v) appear in the Federal Register  
18 not later than 90 days before the date on  
19 which the agency publishes a notice of pro-  
20 posed rulemaking for the rule.

21 “(2) ACCESSIBILITY.—All information provided  
22 to the agency under paragraph (1) shall be promptly  
23 placed in the docket and made accessible to the pub-  
24 lic, unless the information—



1           “(A) is information to which the submitter  
2           does not hold a legal right to authorize disclo-  
3           sure; or

4           “(B) is exempt from disclosure under sec-  
5           tion 552(b).

6           “(3) APPLICABILITY.—With respect to the al-  
7           ternatives and other ideas proposed under paragraph  
8           (1)(B)(iii)—

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

11           “(i) the agency receiving the alter-  
12          natives and other ideas; and

13           “(ii) the public; and

14          “(B) the agency receiving the alternatives  
15          and other ideas may respond to the alternatives  
16          and other ideas.

17          “(4) TIMETABLE.—

18          “(A) IN GENERAL.—After considering any  
19          written material submitted by interested per-  
20          sons under paragraph (1), if an agency deter-  
21          mines to proceed with a rulemaking for a major  
22          rule or a high-impact rule, the agency proposing  
23          the rule shall establish a timetable for the rule-  
24          making that—

1 “(i) contains intermediate completion  
2 dates for actions of the agency, includ-  
3 ing—

4 “(I) the anticipated date on  
5 which the agency shall publish the no-  
6 tice required under subsection (c)(1)  
7 with respect to the rule; and

8 “(II) the duration of the com-  
9 ment period required under subsection  
10 (c)(4), including the date on which the  
11 comment period shall end; and

12 “(ii) includes a final completion date  
13 for actions by the agency.

14 “(B) PUBLICATION.—The timetable re-  
15 quired under subparagraph (A) shall be pub-  
16 lished in the electronic docket established under  
17 paragraph (1)(A) with respect to the rule-  
18 making.

19 “(C) CONSIDERATION OF FACTORS.—In  
20 establishing the timetable required under sub-  
21 paragraph (A), an agency shall consider rel-  
22 evant factors, including—

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

1 “(ii) the resources available to the  
2 agency;

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

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

7 “(D) REPORT REQUIRED.—

8 “(i) IN GENERAL.—An agency that  
9 fails to meet an intermediate or final com-  
10 pletion date for an action established under  
11 subparagraph (A) shall submit to Congress  
12 and the Director of the Office of Manage-  
13 ment and Budget a report regarding why  
14 the agency failed to meet the completion  
15 date.

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

19 “(I) include an amended time-  
20 table for the rulemaking; and

21 “(II) be published—

22 “(aa) in the Federal Reg-  
23 ister; and

24 “(bb) in the electronic dock-  
25 et established under paragraph

1 (1)(A) with respect to the rule-  
2 making.

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

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

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

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

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

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

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

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

4                   “(i) a description of the alternative re-  
 5                   sponse the agency has determined to  
 6                   adopt; and

7                   “(ii) if the agency intends to issue a  
 8                   rule, any information required under sub-  
 9                   section (c).

10          “(e) PUBLIC HEARING FOR HIGH-IMPACT RULES.—

11           “(1) PETITION FOR PUBLIC HEARING.—

12                   “(A) IN GENERAL.—Before the date on  
 13                   which the comment period closes with respect to  
 14                   a proposed high-impact rule, an interested per-  
 15                   son may petition the agency that proposed the  
 16                   rule to hold a public hearing in accordance with  
 17                   this subsection.

18                   “(B) GRANTING AND DENIAL OF PETI-  
 19                   TION.—

20                   “(i) GRANTING OF PETITION.—Not  
 21                   later than 30 days after the date on which  
 22                   an agency receives a petition submitted  
 23                   under subparagraph (A) with respect to a  
 24                   rule, the agency shall grant the petition, in

1 whole or in part, if the petition shows  
2 that—

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

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

17 “(III) the resolution of the dis-  
18 puted factual issues described in sub-  
19 clause (I) would likely have an effect  
20 on—

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

23 “(bb) whether the proposed  
24 rule achieves relevant statutory  
25 objectives, including the objec-

1                   tives of the statutory provision on  
2                   which the rulemaking relies.

3                   “(ii) DENIAL OF PETITION.—If an  
4                   agency denies a petition submitted under  
5                   subparagraph (A) in whole or in part, the  
6                   agency shall include in the rulemaking  
7                   record an explanation for the denial that is  
8                   sufficient for judicial review, including—

9                   “(I) findings by the agency  
10                  that—

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

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

24                  “(II) a reasoned determination  
25                  by the agency that the factual issues

1 raised by the petition, even if subject  
 2 to genuine dispute and not subject to  
 3 subclause (I)(bb), will not have an ef-  
 4 fect on—

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

7 “(bb) whether the proposed  
 8 rule achieves relevant statutory  
 9 objectives, including the objec-  
 10 tives of the statutory provision on  
 11 which the rulemaking relies.

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

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

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

24 “(B) the factual issues to be considered at  
 25 the hearing.



1 “(3) HEARING REQUIREMENTS.—

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

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

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

13 “(B) PROCEDURES.—

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

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

24 “(iii) ADOPTION OF RULES GOV-  
25 ERNING HEARINGS.—To govern a hearing

1 held under this subsection, each agency  
2 shall adopt rules that provide for—

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

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

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

22 “(IV) when appropriate, and to  
23 the extent practicable, the consolida-  
24 tion of proceedings with respect to

1 multiple petitions submitted under  
 2 this subsection into a single hearing.

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

9 “(4) JUDICIAL REVIEW.—

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

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

20 “(f) FINAL RULES.—

21 “(1) NET BENEFITS OF MAJOR OR HIGH-IM-  
 22 PACT RULE.—

23 “(A) IN GENERAL.—Except as provided in  
 24 subparagraph (B), in a rulemaking for a major  
 25 rule or a high-impact rule, an agency shall

1           adopt the alternative considered under sub-  
 2           section (b)(5) that maximizes net benefits, tak-  
 3           ing into consideration only the costs and bene-  
 4           fits that arise within the scope of the statutory  
 5           provision that authorizes the rulemaking.

6           “(B) EXCEPTIONS.—In a rulemaking for a  
 7           major rule or a high-impact rule, an agency  
 8           may adopt an alternative other than as required  
 9           under subparagraph (A) only if—

10               “(i) the Administrator approves the  
 11               adoption by the agency of the alternative;  
 12               and

13               “(ii) the alternative is adopted to—

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

22                       “(II) achieve additional benefits  
 23                       or cost reductions, provided that the  
 24                       agency—

25                               “(aa) identifies—

1 “(AA) all such addi-  
 2 tional benefits and the asso-  
 3 ciated costs of those bene-  
 4 fits; and

5 “(BB) all such cost re-  
 6 ductions and the associated  
 7 benefits of those cost reduc-  
 8 tions; and

9 “(bb) explains why—

10 “(AA) the additional  
 11 benefits justify the addi-  
 12 tional costs; or

13 “(BB) the additional  
 14 cost reductions justify any  
 15 benefits foregone.

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

22 “(2) PUBLICATION OF NOTICE OF FINAL RULE-  
 23 MAKING.—After submitting a final rule to the Ad-  
 24 ministrator for review and obtaining a certification  
 25 from the Administrator that the review has con-

1       cluded, the agency shall publish a notice of final  
2       rulemaking in the Federal Register, which shall in-  
3       clude—

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

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

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

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

18                      “(i) the benefits of the rule advance  
19              the relevant objectives of the statutory pro-  
20              vision on which the rulemaking relies and  
21              justify the costs of the rule; and

22                      “(ii)(I) no other alternative considered  
23              would achieve the relevant objectives of the  
24              statutory provision on which the rule-  
25              making relies in a manner that more

1           greatly maximizes net benefits as required  
2           under paragraph (1)(A); or

3           “(II) the adoption by the agency of a  
4           more costly or less costly rule complies  
5           with paragraph (1)(B).

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

9           “(A) adopt a final rule on the basis of the  
10          best reasonably available scientific, technical, or  
11          economic information; and

12          “(B) to the maximum extent practicable,  
13          use that information in compliance with the  
14          guidelines issued under section 515 of the  
15          Treasury and General Government Appropria-  
16          tions Act, 2001 (Public Law 106–554; 114  
17          Stat. 2763A–154).

18          “(4) ACCESSIBILITY.—

19          “(A) IN GENERAL.—Not later than the  
20          date on which an agency publishes a notice of  
21          final rulemaking under paragraph (2), all stud-  
22          ies, models, scientific literature, and other in-  
23          formation developed or relied upon by the agen-  
24          cy, and actions taken by the agency to obtain  
25          that information, in connection with the deter-

1 mination of the agency to finalize the rule that  
2 is the subject of the rulemaking shall be placed  
3 in the docket for the rule and made accessible  
4 to the public.

5 “(B) INFORMATION CONTROLLED BY NON-  
6 GOVERNMENTAL PERSON.—With respect to any  
7 information to which a nongovernmental person  
8 holds a legal right to prohibit or limit reproduc-  
9 tion, distribution, or public display, the infor-  
10 mation shall be—

11 “(i) placed in the docket through cita-  
12 tion or incorporation by reference, includ-  
13 ing a specification of the identity of the  
14 nongovernmental person who holds a legal  
15 right to prohibit or limit reproduction, dis-  
16 tribution, or public display of the informa-  
17 tion and the means by which a member of  
18 the public may request a full copy of the  
19 information from that holder; and

20 “(ii) considered made accessible to the  
21 public after a placement described in  
22 clause (i), provided that the nongovern-  
23 mental person who holds a legal right to  
24 prohibit or limit reproduction, distribution,  
25 or public display of the information makes



1 the information reasonably available upon  
2 request in a timely manner.

3 “(C) EXCEPTION.—Subparagraphs (A)  
4 and (B) shall not apply with respect to informa-  
5 tion that is exempt from disclosure under sec-  
6 tion 552(b).

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

9 “(A) IN GENERAL.—During the 60-day pe-  
10 riod beginning on a transitional inauguration  
11 day (as defined in section 3349a), with respect  
12 to any final rule that had been placed on file  
13 for public inspection by the Office of the Fed-  
14 eral Register or published in the Federal Reg-  
15 ister as of the date of the inauguration, but  
16 which had not become effective by the date of  
17 the inauguration, the agency issuing the rule  
18 may, by order, delay the effective date of the  
19 rule for not more than 90 days for the purpose  
20 of obtaining public comment on whether—

21 “(i) the rule should be amended or re-  
22 scinded; or

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

1           “(B) OPPORTUNITY FOR COMMENT.—If an  
2           agency delays the effective date of a rule under  
3           subparagraph (A), the agency shall give the  
4           public not less than 30 days to submit com-  
5           ments.

6           “(g) APPLICABILITY.—

7           “(1) PRIMACY OF CERTAIN RULEMAKING CON-  
8           SIDERATIONS AND PROCEDURES IN OTHER FEDERAL  
9           LAWS.—

10           “(A) CONSIDERATIONS.—If a rulemaking  
11           is authorized under a Federal law that requires  
12           an agency to consider, or prohibits an agency  
13           from considering, a factor in a manner that is  
14           inconsistent with, or that conflicts with, the re-  
15           quirements under this section, for the purposes  
16           of this section, the requirement or prohibition,  
17           as applicable, in that other Federal law shall  
18           apply to the agency in the rulemaking.

19           “(B) PROCEDURAL REQUIREMENTS.—If a  
20           rulemaking is authorized under a Federal law  
21           that requires an agency to follow or use, or pro-  
22           hibits an agency from following or using, a pro-  
23           cedure in a manner that is duplicative of, or  
24           that conflicts with, a procedural requirement  
25           under this section, for the purposes of this sec-

tion, the requirement or prohibition, as applicable, in that other Federal law shall apply to the agency in the rulemaking.

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

“(3) EXCEPTIONS FOR GOOD CAUSE.—

“(A) FINDING OF GOOD CAUSE.—

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

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

“(B) DIRECT FINAL RULES.—

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

“(I) publish in the Federal Register the text of the final rule, the brief statement required under subparagraph (A)(ii), and a notice of opportunity for public comment;

“(II) establish a comment period of not less than 30 days for any interested person to submit written material, data, views, or arguments with respect to the final rule; and

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

“(ii) EXCEPTION.—An agency that made a finding described in clause (i) may choose not to follow the requirements under that clause if the agency determines

1 that following the requirements would not  
 2 expedite the issuance of the final rule.

3 “(iii) ADVERSE COMMENTS.—If an  
 4 agency receives significant adverse com-  
 5 ments with respect to a rule during the  
 6 comment period established under clause  
 7 (i)(II), the agency shall—

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

11 “(II) complete rulemaking in ac-  
 12 cordance with subsections (c) through  
 13 (f), as applicable.

14 “(C) INTERIM FINAL RULES.—

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

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

1 “(II) providing a cross-reference  
2 in the portion of the Federal Register  
3 relating to proposed rules that re-  
4 quests public comment with respect to  
5 the rule not later than 60 days after  
6 the rule is published under subclause  
7 (I).

8 “(ii) INTERIM PERIOD.—

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

13 “(aa) rescind the interim  
14 rule;

15 “(bb) initiate rulemaking in  
16 accordance with subsections (c)  
17 through (f); or

18 “(cc) take final action to  
19 adopt a final rule.

20 “(II) NO FORCE OR EFFECT.—If,  
21 as of the end of the 180-day period  
22 described in subclause (I), an agency  
23 fails to take an action described in  
24 item (aa), (bb), or (cc) of that sub-  
25 clause, the interim final rule issued by

1                   the agency shall have no force or ef-  
2                   fect.

3                   “(4) EXEMPTION FOR MONETARY POLICY.—

4                   This section shall not apply to a rulemaking or to  
5                   guidance that concerns monetary policy proposed or  
6                   implemented by the Board of Governors of the Fed-  
7                   eral Reserve System or the Federal Open Market  
8                   Committee.

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

12                  “(h) DATE OF PUBLICATION.—A final rule, a direct  
13                  final rule described in subsection (g)(3)(B), or an interim  
14                  final rule described in subsection (g)(3)(C) shall be pub-  
15                  lished not later than 30 days (or, in the case of a major  
16                  rule or a high-impact rule, not later than 60 days) before  
17                  the effective date of the rule, except—

18                  “(1) for guidance; or

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

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

22                  Each agency shall—

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

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

5           “(j) RULEMAKING GUIDELINES.—

6           “(1) ASSESSMENT OF RULES.—

7           “(A) IN GENERAL.—The Administrator  
 8           shall establish guidelines regarding rulemaking  
 9           as follows:

10           “(i) IDENTIFICATION OF NEED FOR  
 11           RULES.—Guidelines setting forth how  
 12           needs for rulemaking should be identified,  
 13           including—

14           “(I) whether rulemaking is made  
 15           necessary by compelling public need,  
 16           such as material failures of private  
 17           markets or public institutions to pro-  
 18           tect or improve the health and safety  
 19           of the public, the environment, or the  
 20           well-being of the public; and

21           “(II) whether rulemaking needs  
 22           could be lessened by reliance on po-  
 23           tential State, local, Tribal, or regional  
 24           regulatory action or other responses



1 that could be taken in lieu of agency  
2 action.

3 “(ii) ASSESSMENT OF RULES.—Guide-  
4 lines setting forth how the assessment, in-  
5 cluding the quantitative and qualitative as-  
6 sessment, of proposed and final rules  
7 should occur, including how to determine—

8 “(I) the costs and benefits of  
9 proposed and final rules and alter-  
10 natives to them, including quantifiable  
11 and non-quantifiable costs and bene-  
12 fits;

13 “(II) whether proposed and final  
14 rules maximize net benefits;

15 “(III) estimated impacts on jobs,  
16 wages, competition, innovation, and  
17 low-income populations;

18 “(IV) other economic issues that  
19 are relevant to rulemaking under this  
20 section or other sections of this part;  
21 and

22 “(V) risk assessments that are  
23 relevant to rulemaking under this sec-  
24 tion and other sections of this part.

1 “(iii) NUMBERS OF ALTERNATIVES.—  
 2 Guidelines regarding when it may be rea-  
 3 sonable to consider in a rulemaking more  
 4 alternatives than the number presumed to  
 5 be reasonable under subsection (b)(4).

6 “(iv) ADOPTION OF ALTERNATIVES  
 7 FOR MAJOR OR HIGH-IMPACT RULES.—  
 8 Guidelines regarding when it may be ap-  
 9 propriate, in a rulemaking for a major or  
 10 high-impact rule, to adopt an alternative  
 11 final rule under subsection (f)(1)(B).

12 “(v) ADMINISTRATOR REVIEW.—  
 13 Guidelines regarding the efficient submis-  
 14 sion and review of proposed and final rules  
 15 under subsections (c)(1) and (f)(2).

16 “(B) AGENCY ANALYSIS OF RULES.—

17 “(i) IN GENERAL.—The rigor of the  
 18 cost-benefit analysis required or rec-  
 19 ommended by the guidelines established  
 20 under subparagraph (A) shall be commensurate,  
 21 as determined by the Administrator,  
 22 with the economic impact of a rule.

23 “(ii) RISK ASSESSMENT GUIDELINES.—Guidelines for a risk assessment  
 24

1 described in subparagraph (A)(iv) shall in-  
2 clude criteria for—

3 “(I) selecting studies and models;

4 “(II) evaluating and weighing  
5 evidence; and

6 “(III) conducting peer reviews.

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

16 “(2) SIMPLIFICATION OF RULES.—

17 “(A) ISSUANCE OF GUIDELINES.—The Ad-  
18 ministrator shall issue guidelines to promote co-  
19 ordination, simplification, and harmonization of  
20 agency rules during the rulemaking process.

21 “(B) REQUIREMENTS.—The guidelines  
22 issued by the Administrator under subpara-  
23 graph (A) shall advise each agency to—

24 “(i) avoid rules that are inconsistent  
25 or incompatible with, or duplicative of,

1 other regulations of the agency and those  
2 of other agencies; and

3 “(ii) draft the rules of the agency to  
4 be simple and easy to understand, with the  
5 goal of minimizing the potential for uncer-  
6 tainty and litigation arising from the un-  
7 certainty.

8 “(3) CONSISTENCY IN RULEMAKING.—

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

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

18 “(ii) issue guidelines for the adoption  
19 of rules under subsection (e)(3)(B)(iii),  
20 which shall provide a reasonable oppor-  
21 tunity for cross-examination, as described  
22 in subsection (e)(3)(B)(iii)(III).

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

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

3           “(k) 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; and

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

15           “(2) PROCEDURES TO ISSUE MAJOR GUID-  
16 ANCE.—Before issuing any major guidance, an agen-  
17 cy shall make and document a reasoned determina-  
18 tion that—

19                   “(A) such guidance is understandable and  
20           complies with relevant statutory objectives and  
21           regulatory provisions; and

22                   “(B) identifies the costs and benefits, in-  
23           cluding all costs and benefits to be considered  
24           during a rulemaking as required under sub-  
25           section (b), of requiring conduct conforming to

1           such guidance and assures that such benefits  
2           justify such costs.

3           “(3) ISSUANCE OF UPDATED GUIDANCE.—

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

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

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

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

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

22           “(1) MAJOR RULE AND HIGH-IMPACT RULE FRAME-  
23   WORKS.—

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

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

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

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

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

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

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

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

17 “(2) ASSESSMENT.—

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



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

5 “(ii) to determine whether—

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

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

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

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

16 “(AA) other rules; or

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

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

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

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

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

13 “(C) SUBSEQUENT ASSESSMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

15           “(D) ensure that agencies streamline and  
16 coordinate the assessment of major rules or  
17 high-impact rules with similar or related regu-  
18 latory objectives;

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

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

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

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

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

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

20 “(5) APPLICABILITY.—

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

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

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

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

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

14 “(ii) guidance;

15 “(iii) routine and administrative rules;

16 or

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

21 “(B) DIRECT AND INTERIM FINAL MAJOR  
22 RULE OR HIGH-IMPACT RULE.—In the case of a  
23 major rule or a high-impact rule of an agency  
24 for which the agency is not required to issue a  
25 notice of proposed rulemaking in response to an

1 emergency or a statutorily imposed deadline,  
 2 the agency shall publish the framework required  
 3 under paragraph (1)(B) in the Federal Register  
 4 not later than 180 days after the date on which  
 5 the agency publishes the rule.

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

14 “(7) JUDICIAL REVIEW.—

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

18 “(i) published the framework for as-  
 19 sessment of a major rule or a high-impact  
 20 rule in accordance with paragraph (1); or

21 “(ii) completed and published the re-  
 22 quired assessment of a major rule or a  
 23 high-impact rule in accordance with sub-  
 24 paragraphs (A) and (D) of paragraph (2).

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

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

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

22 **SEC. 4. SCOPE OF REVIEW.**

23       Section 706 of title 5, United States Code, is amend-  
 24 ed—



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

4       “(a) IN GENERAL.—To the extent necessary”; and  
 5           (2) in subsection (a), as so designated—

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

8           (B) in paragraph (2)—

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

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

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

18       “(3) with respect to the review of a high-impact  
 19       rule, as defined in section 551 of this title, deter-  
 20       mine whether the factual findings of the agency  
 21       issuing the rule are supported by substantial evi-  
 22       dence.

23       “(b) REVIEW OF ENTIRE RECORD; PREJUDICIAL  
 24       ERROR.—In making a determination under subsection (a),  
 25       the court shall review the whole record or those parts of

1 the record cited by a party, and due account shall be taken  
2 of the rule of prejudicial error.

3 “(c) PRECLUSION OF REVIEW.—

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

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

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

16 “(e) AGENCY INTERPRETATION OF RULES.—The  
17 weight that a reviewing court gives an interpretation by  
18 an agency of a rule of that agency shall depend on the  
19 thoroughness evident in the consideration of the rule by  
20 the agency, the validity of the reasoning of the agency,  
21 and the 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 as a reasonable mind might accept as ade-  
11       quate to support a conclusion in light of the record  
12       considered as a whole.”.

### 13   **SEC. 6. APPLICATION.**

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

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

22       Nothing in this Act, or in the amendments made by  
23   this Act, may be construed as altering, modifying, or  
24   abridging an exclusive right granted under title 17, United  
25   States Code.

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

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

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

13 (c) CONGRESSIONAL ACCOUNTABILITY ACT OF  
14 1995.—Section 409 of the Congressional Accountability  
15 Act of 1995 (2 U.S.C. 1409) is amended, in the first sen-  
16 tence—

17 (1) by striking “section 706(2)” and inserting  
18 “section 706(a)(2)”; and

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

21 (d) CONSUMER PRODUCT SAFETY ACT.—Section 9(i)  
22 of the Consumer Product Safety Act (15 U.S.C. 2058(i))  
23 is amended, in the first sentence, by striking “section  
24 553(e)” and inserting “section 553(i)”.

25 (e) DEEP SEABED HARD MINERAL RESOURCES  
26 ACT.—Section 302(b) of the Deep Seabed Hard Mineral

1 Resources Act (30 U.S.C. 1462(b)) is amended, in the  
2 third sentence, by striking “section 706(2)(E)” and in-  
3 serting “section 706(a)(2)(E)”.

4 (f) DEFENSE PRODUCTION ACT OF 1950.—Section  
5 709(b)(1) of the Defense Production Act of 1950 (50  
6 U.S.C. 4559(b)(1)) is amended by striking “for not less  
7 than 30 days, consistent with the requirements of section  
8 553(b)” and inserting “in a manner consistent with the  
9 requirements of section 553(c)”.

10 (g) ENDANGERED SPECIES ACT OF 1973.—Section  
11 4(b)(3) of the Endangered Species Act of 1973 (16 U.S.C.  
12 1533(b)(3)) is amended—

13 (1) in subparagraph (A), in the first sentence,  
14 by striking “section 553(e)” and inserting “section  
15 553(i)”; and

16 (2) in subparagraph (D)(i), in the first sen-  
17 tence, by striking “section 553(e)” and inserting  
18 “section 553(i)”.

19 (h) EXPEDITED FUNDS AVAILABILITY ACT.—Section  
20 609(a) of the Expedited Funds Availability Act (12 U.S.C.  
21 4008(a)) is amended, in the matter preceding paragraph  
22 (1), by striking “section 553(c)” and inserting “section  
23 553”.

24 (i) FASTENER QUALITY ACT.—Section 6(b)(3) of the  
25 Fastener Quality Act (15 U.S.C. 5408(b)(3)) is amended,

1 in the second sentence, by striking “section 706(2)” and  
2 inserting “section 706(a)(2)”.

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

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

11 (1) in subsection (e)(1), in the first sentence, by  
12 striking “(other than clause (B) of the last sentence  
13 of subsection (b) of such section) of title 5 of the  
14 United States Code” and inserting “of title 5,  
15 United States Code, other than subsection (g)(3) of  
16 such section,”; and

17 (2) in subsection (j), in the first sentence, by  
18 striking “section 553(e)” and inserting “section  
19 553(i)”.

20 (l) FEDERAL TRADE COMMISSION ACT.—Section  
21 18(e) of the Federal Trade Commission Act (15 U.S.C.  
22 57a(e)) is amended—

23 (1) in paragraph (3), in the second sentence of  
24 the matter preceding subparagraph (A), by striking

1 “section 706(2)” and inserting “section 706(a)(2)”;  
2 and

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

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

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

11 (2) in section 16(c)(2) (15 U.S.C. 1203(c)(2)),  
12 by striking “section 553(b)” and inserting “section  
13 553(c)”.

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

19 (o) HIGH SEAS FISHING COMPLIANCE ACT OF  
20 1995.—Section 108(d) of the High Seas Fishing Compli-  
21 ance Act of 1995 (16 U.S.C. 5507(d)) is amended, in the  
22 third sentence, by striking “section 706(2)” and inserting  
23 “section 706(a)(2)”.

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

4 (1) in section 643(b)(3) (42 U.S.C.  
 5 13603(b)(3)), in the first sentence, by striking  
 6 “(notwithstanding subsections (a)(2), (b)(B), and  
 7 (d)(3) of such section)” and inserting “(notwith-  
 8 standing subsections (a)(2), (g)(3), and (h)(2) of  
 9 such section)”; and

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

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

19 (r) MAGNUSON-STEVENSON FISHERY CONSERVATION  
 20 AND MANAGEMENT ACT.—Section 308(b) of the Magnu-  
 21 son-Stevens Fishery Conservation and Management Act  
 22 (16 U.S.C. 1858(b)) is amended, in the third sentence,  
 23 by striking “section 706(2)” and inserting “section  
 24 706(a)(2)”.



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

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

8 (2) in subsection (d)(2), in the second sen-  
 9 tence—

10 (A) by striking “Title” and inserting  
 11 “title”; and

12 (B) by striking “subsection (d) of such sec-  
 13 tion 553” and inserting “subsection (h) of such  
 14 section 553”.

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

22 (u) MIGRANT AND SEASONAL AGRICULTURAL WORK-  
 23 ER PROTECTION ACT.—The Migrant and Seasonal Agri-  
 24 cultural Worker Protection Act (29 U.S.C. 1801 et seq.)  
 25 is amended—

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

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

7 (v) MILWAUKEE RAILROAD RESTRUCTURING ACT.—  
 8 The Milwaukee Railroad Restructuring Act (45 U.S.C.  
 9 901 et seq.) is amended—

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

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

22 (w) NATIVE AMERICAN PROGRAMS ACT OF 1974.—  
 23 Section 814 of the Native American Programs Act of 1974  
 24 (42 U.S.C. 2992b–1) is amended—

25 (1) in subsection (b)—

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

(B) in paragraph (2)—

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

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

(C) in paragraph (3), in the matter preceding subparagraph (A)—

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

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

(2) in subsection (c)—

1 (A) in the matter preceding paragraph

2 (1)—

3 (i) by striking “section 553(d)” and

4 inserting “section 553(h)”; and

5 (ii) by striking “an interpretative

6 rule) or general statement of policy” and

7 inserting “guidance)”; and

8 (B) in the flush text following paragraph

9 (2), by striking “the first 2 sentences of section

10 553(b)” and inserting “section 553(c)”;

11 (3) in subsection (d), by striking “an interpre-

12 tative rule) and each general statement of policy”

13 and inserting “guidance)”;

14 (4) in subsection (e)—

15 (A) by striking “any interpretative rule) or

16 a general statement of policy” and inserting

17 “guidance)”;

18 (B) by striking “or such general statement

19 of policy”;

20 (5) in subsection (f)—

21 (A) by striking “an interpretative rule) or

22 a general statement of policy” and inserting

23 “guidance)”;

24 (B) by striking “or such general statement

25 of policy”; and

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

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

5           (x) NATURAL GAS POLICY ACT OF 1978.—Section  
6 502(b) of the Natural Gas Policy Act of 1978 (15 U.S.C.  
7 3412(b)) is amended, in the third sentence, by striking  
8 “section 553(d)(3)” and inserting “section 553(h)(2)”.

9           (y) NOISE CONTROL ACT OF 1972.—Section 6(c)(2)  
10 of the Noise Control Act of 1972 (42 U.S.C. 4905(c)(2))  
11 is amended by striking “the first sentence of section  
12 553(c)” and inserting “section 553(c)(4)”.

13           (z) NORTHEAST RAIL SERVICE ACT OF 1981.—Sec-  
14 tion 1152(c) of the Northeast Rail Service Act of 1981  
15 (45 U.S.C. 1105(c)) is amended by striking “paragraphs  
16 (2) (A), (B), (C), and (D) of section 706, title 5” and  
17 inserting “subparagraphs (A) through (D) of section  
18 706(a)(2) of title 5”.

19           (aa) NORTHERN PACIFIC HALIBUT ACT OF 1982.—  
20 Section 8(b) of the Northern Pacific Halibut Act of 1982  
21 (16 U.S.C. 773f(b)) is amended, in the third sentence, by  
22 striking “section 706(2)” and inserting “section  
23 706(a)(2)”.

1 (bb) POISON PREVENTION PACKAGING ACT OF  
 2 1970.—The Poison Prevention Packaging Act of 1970 (15  
 3 U.S.C. 1471 et seq.) is amended—

4 (1) in section 5 (15 U.S.C. 1474)—

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

11 (B) in subsection (b)—

12 (i) by striking “of the United States  
 13 Code” each place that term appears and  
 14 inserting “, United States Code”; and

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

19 (2) in section 7(c)(2) (15 U.S.C. 1476(c)(2)),  
 20 by striking “section 553(b)” and inserting “section  
 21 553(c)”.

22 (cc) POULTRY PRODUCTS INSPECTION ACT.—Section  
 23 14(c) of the Poultry Products Inspection Act (21 U.S.C.  
 24 463(c)) is amended by striking “section 553(c) of title 5,

1 United States Code” and inserting “section 553(c)(4) of  
2 title 5, United States Code,”.

3 (dd) PUBLIC HEALTH SERVICE ACT.—Section  
4 2723(b)(2)(E)(iii) of the Public Health Service Act (42  
5 U.S.C. 300gg–22(b)(2)(E)(iii)) is amended by striking  
6 “section 706(2)(E)” and inserting “section  
7 706(a)(2)(E)”.

8 (ee) REGIONAL RAIL REORGANIZATION ACT OF  
9 1973.—Section 216(c)(3) of the Regional Rail Reorga-  
10 nization Act of 1973 (45 U.S.C. 726(c)(3)) is amended,  
11 in the fourth sentence, by striking “section 706(2)” and  
12 inserting “section 706(a)(2)”.

13 (ff) SOCIAL SECURITY ACT.—The Social Security Act  
14 (42 U.S.C. 301 et seq.) is amended—

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

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

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

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

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

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

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

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

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



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

3           (5) in section 1103(b)(1), by striking “section  
4       553(b)(1), (2), and (3)” and inserting “section  
5       553(c”;

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

9       (jj) TITLE 11, UNITED STATES CODE.—Section  
10   1172(b) of title 11, United States Code, is amended, in  
11   the second sentence, by striking “sections 706(2)(A),  
12   706(2)(B), 706(2)(C), and 706(2)(D) of title 5” and in-  
13   serting “subparagraphs (A), (B), (C), and (D) of section  
14   706(a)(2) of title 5”.

15       (kk) TITLE 14, UNITED STATES CODE.—Section  
16   2507(b)(2)(A) of title 14, United States Code, is amended  
17   by striking “section 706(1)” and inserting “section  
18   706(a)(1)”.

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

23       (mm) TITLE 41, UNITED STATES CODE.—Section  
24   8503(a)(2) of title 41, United States Code, is amended

1 by striking “section 553(b) to (e)” and inserting “section  
2 553”.

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

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

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

13 (oo) TOXIC SUBSTANCES CONTROL ACT.—Section  
14 19(c)(1)(B) of the Toxic Substances Control Act (15  
15 U.S.C. 2618(c)(1)(B)) is amended—

16 (1) in clause (i)—

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

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

23 (2) in clause (ii), by striking “section 553(c)”  
24 and inserting “section 553(f)(2)”.

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

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

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