

113TH CONGRESS
2D SESSION

H. R. 2804

IN THE SENATE OF THE UNITED STATES

MARCH 4, 2014

Received; read twice and referred to the Committee on Homeland Security and
Governmental Affairs

AN ACT

To amend title 5, United States Code, to require the Administrator of the Office of Information and Regulatory Affairs to publish information about rules on the Internet, 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,*

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

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “Achieving Less Excess in Regulation and Requiring
 4 Transparency Act of 2014” or as the “ALERRT Act of
 5 2014”.

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

Sec. 1. Short title; table of contents.

TITLE I—ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT

Sec. 101. Short title.

Sec. 102. Office of Information and Regulatory Affairs publication of information relating to rules.

TITLE II—REGULATORY ACCOUNTABILITY ACT

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Rule making.

Sec. 204. Agency guidance; procedures to issue major guidance; presidential authority to issue guidelines for issuance of guidance.

Sec. 205. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.

Sec. 206. Actions reviewable.

Sec. 207. Scope of review.

Sec. 208. Added definition.

Sec. 209. Effective date.

TITLE III—REGULATORY FLEXIBILITY IMPROVEMENTS ACT

Sec. 301. Short title.

Sec. 302. Clarification and expansion of rules covered by the Regulatory Flexibility Act.

Sec. 303. Expansion of report of regulatory agenda.

Sec. 304. Requirements providing for more detailed analyses.

Sec. 305. Repeal of waiver and delay authority; additional powers of the Chief Counsel for Advocacy.

Sec. 306. Procedures for gathering comments.

Sec. 307. Periodic review of rules.

Sec. 308. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.

Sec. 309. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.

Sec. 310. Establishment and approval of small business concern size standards by Chief Counsel for Advocacy.

Sec. 311. Clerical amendments.

Sec. 312. Agency preparation of guides.

Sec. 313. Comptroller General report.

TITLE IV—SUNSHINE FOR REGULATORY DECREES AND
SETTLEMENTS ACT

Sec. 401. Short title.
 Sec. 402. Definitions.
 Sec. 403. Consent decree and settlement reform.
 Sec. 404. Motions to modify consent decrees.
 Sec. 405. Effective date.

1 TITLE I—ALL ECONOMIC REGU-
2 LATIONS ARE TRANSPARENT
3 ACT

4 SEC. 101. SHORT TITLE.

5 This title may be cited as the “All Economic Regula-
6 tions are Transparent Act of 2014” or the “ALERT Act
7 of 2014”.

8 SEC. 102. OFFICE OF INFORMATION AND REGULATORY AF-
9 FAIRS PUBLICATION OF INFORMATION RE-
10 LATING TO RULES.

11 (a) AMENDMENT.—Title 5, United States Code, is
12 amended by inserting after chapter 6, the following new
13 chapter:

14 “CHAPTER 6A—OFFICE OF INFORMATION
15 AND REGULATORY AFFAIRS PUBLICA-
16 TION OF INFORMATION RELATING TO
17 RULES

“Sec.
 “651. Agency monthly submission to Office of Information and Regulatory Af-
 fairs.
 “652. Office of Information and Regulatory Affairs Publications.
 “653. Requirement for rules to appear in agency-specific monthly publication.
 “654. Definitions.

1 **“§ 651. Agency monthly submission to Office of Infor-**
2 **mation and Regulatory Affairs**

3 “On a monthly basis, the head of each agency shall
4 submit to the Administrator of the Office of Information
5 and Regulatory Affairs (referred to in this chapter as the
6 ‘Administrator’), in such a manner as the Administrator
7 may reasonably require, the following information:

8 “(1) For each rule that the agency expects to
9 propose or finalize during the following year:

10 “(A) A summary of the nature of the rule,
11 including the regulation identifier number and
12 the docket number for the rule.

13 “(B) The objectives of and legal basis for
14 the issuance of the rule, including—

15 “(i) any statutory or judicial deadline;
16 and

17 “(ii) whether the legal basis restricts
18 or precludes the agency from conducting
19 an analysis of the costs or benefits of the
20 rule during the rule making, and if not,
21 whether the agency plans to conduct an
22 analysis of the costs or benefits of the rule
23 during the rule making.

24 “(C) Whether the agency plans to claim an
25 exemption from the requirements of section 553
26 pursuant to section 553(b)(B).

1 “(D) The stage of the rule making as of
2 the date of submission.

3 “(E) Whether the rule is subject to review
4 under section 610.

5 “(2) For any rule for which the agency expects
6 to finalize during the following year and has issued
7 a general notice of proposed rule making—

8 “(A) an approximate schedule for com-
9 pleting action on the rule;

10 “(B) an estimate of whether the rule will
11 cost—

12 “(i) less than \$50,000,000;

13 “(ii) \$50,000,000 or more but less
14 than \$100,000,000;

15 “(iii) \$100,000,000 or more but less
16 than \$500,000,000;

17 “(iv) \$500,000,000 or more but less
18 than \$1,000,000,000;

19 “(v) \$1,000,000,000 or more but less
20 than \$5,000,000,000;

21 “(vi) \$5,000,000,000 or more but less
22 than \$10,000,000,000; or

23 “(vii) \$10,000,000,000 or more; and

24 “(C) any estimate of the economic effects
25 of the rule, including any estimate of the net ef-

fect that the rule will have on the number of jobs in the United States, that was considered in drafting the rule. If such estimate is not available, a statement affirming that no information on the economic effects, including the effect on the number of jobs, of the rule has been considered.

**“§ 652. Office of Information and Regulatory Affairs
Publications**

“(a) AGENCY-SPECIFIC INFORMATION PUBLISHED MONTHLY.—Not later than 30 days after the submission of information pursuant to section 651, the Administrator shall make such information publicly available on the Internet.

“(b) CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING PUBLISHED ANNUALLY.—

“(1) PUBLICATION IN THE FEDERAL REGISTER.—Not later than October 1 of each year, the Administrator shall publish in the Federal Register, for the previous year the following:

“(A) The information that the Administrator received from the head of each agency under section 651.

“(B) The number of rules and a list of each such rule—

1 “(i) that was proposed by each agen-
2 cy, including, for each such rule, an indica-
3 tion of whether the issuing agency con-
4 ducted an analysis of the costs or benefits
5 of the rule; and

6 “(ii) that was finalized by each agen-
7 cy, including for each such rule an indica-
8 tion of whether—

9 “(I) the issuing agency conducted
10 an analysis of the costs or benefits of
11 the rule;

12 “(II) the agency claimed an ex-
13 emption from the procedures under
14 section 553 pursuant to section
15 553(b)(B); and

16 “(III) the rule was issued pursu-
17 ant to a statutory mandate or the rule
18 making is committed to agency discre-
19 tion by law.

20 “(C) The number of agency actions and a
21 list of each such action taken by each agency
22 that—

23 “(i) repealed a rule;

24 “(ii) reduced the scope of a rule;

25 “(iii) reduced the cost of a rule; or

1 “(iv) accelerated the expiration date
2 of a rule.

3 “(D) The total cost (without reducing the
4 cost by any offsetting benefits) of all rules pro-
5 posed or finalized, and the number of rules for
6 which an estimate of the cost of the rule was
7 not available.

8 “(2) PUBLICATION ON THE INTERNET.—Not
9 later than October 1 of each year, the Administrator
10 shall make publicly available on the Internet the fol-
11 lowing:

12 “(A) The analysis of the costs or benefits,
13 if conducted, for each proposed rule or final
14 rule issued by an agency for the previous year.

15 “(B) The docket number and regulation
16 identifier number for each proposed or final
17 rule issued by an agency for the previous year.

18 “(C) The number of rules and a list of
19 each such rule reviewed by the Director of the
20 Office of Management and Budget for the pre-
21 vious year, and the authority under which each
22 such review was conducted.

23 “(D) The number of rules and a list of
24 each such rule for which the head of an agency

1 completed a review under section 610 for the
2 previous year.

3 “(E) The number of rules and a list of
4 each such rule submitted to the Comptroller
5 General under section 801.

6 “(F) The number of rules and a list of
7 each such rule for which a resolution of dis-
8 approval was introduced in either the House of
9 Representatives or the Senate under section
10 802.

11 **“§ 653. Requirement for rules to appear in agency-**
12 **specific monthly publication**

13 “(a) IN GENERAL.—Subject to subsection (b), a rule
14 may not take effect until the information required to be
15 made publicly available on the Internet regarding such
16 rule pursuant to section 652(a) has been so available for
17 not less than 6 months.

18 “(b) EXCEPTIONS.—The requirement of subsection
19 (a) shall not apply in the case of a rule—

20 “(1) for which the agency issuing the rule
21 claims an exception under section 553(b)(B); or

22 “(2) which the President determines by Execu-
23 tive order should take effect because the rule is—

24 “(A) necessary because of an imminent
25 threat to health or safety or other emergency;

1 “(B) necessary for the enforcement of
2 criminal laws;

3 “(C) necessary for national security; or

4 “(D) issued pursuant to any statute imple-
5 menting an international trade agreement.

6 **“§ 654. Definitions**

7 “‘In this chapter, the terms ‘agency’, ‘agency action’,
8 ‘rule’, and ‘rule making’ have the meanings given those
9 terms in section 551.’”.

10 (b) TECHNICAL AND CONFORMING AMENDMENT.—
11 The table of chapters for part I of title 5, United States
12 Code, is amended by inserting after the item relating to
13 chapter 5, the following:

 “6. The Analysis of Regulatory Functions 601
 “6A. Office of Information and Regulatory Affairs Publication of In-
 formation Relating to Rules 651”.

14 (c) EFFECTIVE DATES.—

15 (1) AGENCY MONTHLY SUBMISSION TO THE OF-
16 FICE OF INFORMATION AND REGULATORY AF-
17 FAIRS.—The first submission required pursuant to
18 section 651 of title 5, United States Code, as added
19 by subsection (a), shall be submitted not later than
20 30 days after the date of the enactment of this title,
21 and monthly thereafter.

22 (2) CUMULATIVE ASSESSMENT OF AGENCY
23 RULE MAKING.—

1 (A) IN GENERAL.—Subsection (b) of sec-
2 tion 652 of title 5, United States Code, as
3 added by subsection (a), shall take effect on the
4 date that is 60 days after the date of the enact-
5 ment of this title.

6 (B) DEADLINE.—The first requirement to
7 publish or make available, as the case may be,
8 under subsection (b) of section 652 of title 5,
9 United States Code, as added by subsection (a),
10 shall be the first October 1 after the effective
11 date of such subsection.

12 (C) FIRST PUBLICATION.—The require-
13 ment under section 652(b)(2)(A) of title 5,
14 United States Code, as added by subsection (a),
15 shall include for the first publication, any anal-
16 ysis of the costs or benefits conducted for a
17 proposed or final rule, for the 10 years before
18 the date of the enactment of this title.

19 (3) REQUIREMENT FOR RULES TO APPEAR IN
20 AGENCY-SPECIFIC MONTHLY PUBLICATION.—Section
21 653 of title 5, United States Code, as added by sub-
22 section (a), shall take effect on the date that is 8
23 months after the date of the enactment of this title.

TITLE II—REGULATORY ACCOUNTABILITY ACT

SEC. 201. SHORT TITLE.

This title may be cited as the “Regulatory Accountability Act of 2014”.

SEC. 202. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

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

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

(3) by adding at the end the following:

“(15) ‘major rule’ means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose—

“(A) an annual cost on the economy of \$100,000,000 or more, adjusted annually for inflation;

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

“(C) significant adverse effects on competition, employment, investment, productivity, in-

1 novation, or on the ability of United States-
2 based enterprises to compete with foreign-based
3 enterprises in domestic and export markets; or

4 “(D) significant impacts on multiple sec-
5 tors of the economy;

6 “(16) ‘high-impact rule’ means any rule that
7 the Administrator of the Office of Information and
8 Regulatory Affairs determines is likely to impose an
9 annual cost on the economy of \$1,000,000,000 or
10 more, adjusted annually for inflation;

11 “(17) ‘negative-impact on jobs and wages rule’
12 means any rule that the agency that made the rule
13 or the Administrator of the Office of Information
14 and Regulatory Affairs determines is likely to—

15 “(A) in one or more sectors of the economy
16 that has a 6-digit code under the North Amer-
17 ican Industry Classification System, reduce em-
18 ployment not related to new regulatory compli-
19 ance by 1 percent or more annually during the
20 1-year, 5-year, or 10-year period after imple-
21 mentation;

22 “(B) in one or more sectors of the econ-
23 omy that has a 6-digit code under the North
24 American Industry Classification System, re-
25 duce average weekly wages for employment not

1 related to new regulatory compliance by 1 per-
2 cent or more annually during the 1-year, 5-
3 year, or 10-year period after implementation;

4 “(C) in any industry area (as such term is
5 defined in the Current Population Survey con-
6 ducted by the Bureau of Labor Statistics) in
7 which the most recent annual unemployment
8 rate for the industry area is greater than 5 per-
9 cent, as determined by the Bureau of Labor
10 Statistics in the Current Population Survey, re-
11 duce employment not related to new regulatory
12 compliance during the first year after imple-
13 mentation; or

14 “(D) in any industry area in which the Bu-
15 reau of Labor Statistics projects in the Occupa-
16 tional Employment Statistics program that the
17 employment level will decrease by 1 percent or
18 more, further reduce employment not related to
19 new regulatory compliance during the first year
20 after implementation;

21 “(18) ‘guidance’ means an agency statement of
22 general applicability and future effect, other than a
23 regulatory action, that sets forth a policy on a statu-
24 tory, regulatory or technical issue or an interpreta-
25 tion of a statutory or regulatory issue;

1 “(19) ‘major guidance’ means guidance that the
2 Administrator of the Office of Information and Reg-
3 ulatory Affairs finds is likely to lead to—

4 “(A) an annual cost on the economy of
5 \$100,000,000 or more, adjusted annually for
6 inflation;

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

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

16 “(D) significant impacts on multiple sec-
17 tors of the economy;

18 “(20) the ‘Information Quality Act’ means sec-
19 tion 515 of Public Law 106–554, the Treasury and
20 General Government Appropriations Act for Fiscal
21 Year 2001, and guidelines issued by the Adminis-
22 trator of the Office of Information and Regulatory
23 Affairs or other agencies pursuant to the Act; and

24 “(21) the ‘Office of Information and Regulatory
25 Affairs’ means the office established under section

1 3503 of chapter 35 of title 44 and any successor to
2 that office.”.

3 **SEC. 203. RULE MAKING.**

4 (a) Section 553(a) of title 5, United States Code, is
5 amended by striking “(a) This section applies” and insert-
6 ing “(a) APPLICABILITY.—This section applies”.

7 (b) Section 553 of title 5, United States Code, is
8 amended by striking subsections (b) through (e) and in-
9 serting the following:

10 “(b) RULE MAKING CONSIDERATIONS.—In a rule
11 making, an agency shall make all preliminary and final
12 factual determinations based on evidence and consider, in
13 addition to other applicable considerations, the following:

14 “(1) The legal authority under which a rule
15 may be proposed, including whether a rule making
16 is required by statute, and if so, whether by a spe-
17 cific date, or whether the agency has discretion to
18 commence a rule making.

19 “(2) Other statutory considerations applicable
20 to whether the agency can or should propose a rule
21 or undertake other agency action.

22 “(3) The specific nature and significance of the
23 problem the agency may address with a rule (includ-
24 ing the degree and nature of risks the problem poses
25 and the priority of addressing those risks compared

1 to other matters or activities within the agency’s ju-
2 risdiction), whether the problem warrants new agen-
3 cy action, and the countervailing risks that may be
4 posed by alternatives for new agency action.

5 “(4) Whether existing rules have created or
6 contributed to the problem the agency may address
7 with a rule and whether those rules could be amend-
8 ed or rescinded to address the problem in whole or
9 part.

10 “(5) Any reasonable alternatives for a new rule
11 or other response identified by the agency or inter-
12 ested persons, including not only responses that
13 mandate particular conduct or manners of compli-
14 ance, but also—

15 “(A) the alternative of no Federal re-
16 sponse;

17 “(B) amending or rescinding existing
18 rules;

19 “(C) potential regional, State, local, or
20 tribal regulatory action or other responses that
21 could be taken in lieu of agency action; and

22 “(D) potential responses that—

23 “(i) specify performance objectives
24 rather than conduct or manners of compli-
25 ance;

1 “(ii) establish economic incentives to
2 encourage desired behavior;

3 “(iii) provide information upon which
4 choices can be made by the public; or

5 “(iv) incorporate other innovative al-
6 ternatives rather than agency actions that
7 specify conduct or manners of compliance.

8 “(6) Notwithstanding any other provision of
9 law—

10 “(A) the potential costs and benefits asso-
11 ciated with potential alternative rules and other
12 responses considered under section 553(b)(5),
13 including direct, indirect, and cumulative costs
14 and benefits and estimated impacts on jobs (in-
15 cluding an estimate of the net gain or loss in
16 domestic jobs), wages, economic growth, innova-
17 tion, and economic competitiveness;

18 “(B) means to increase the cost-effective-
19 ness of any Federal response; and

20 “(C) incentives for innovation, consistency,
21 predictability, lower costs of enforcement and
22 compliance (to government entities, regulated
23 entities, and the public), and flexibility.

24 “(c) ADVANCE NOTICE OF PROPOSED RULE MAKING
25 FOR MAJOR RULES, HIGH-IMPACT RULES, NEGATIVE-IM-

1 PACT ON JOBS AND WAGES RULES, AND RULES INVOLV-
2 ING NOVEL LEGAL OR POLICY ISSUES.—In the case of
3 a rule making for a major rule, a high-impact rule, a nega-
4 tive-impact on jobs and wages rule, or a rule that involves
5 a novel legal or policy issue arising out of statutory man-
6 dates, not later than 90 days before a notice of proposed
7 rule making is published in the Federal Register, an agen-
8 cy shall publish advance notice of proposed rule making
9 in the Federal Register. In publishing such advance notice,
10 the agency shall—

11 “(1) include a written statement identifying, at
12 a minimum—

13 “(A) the nature and significance of the
14 problem the agency may address with a rule, in-
15 cluding data and other evidence and informa-
16 tion on which the agency expects to rely for the
17 proposed rule;

18 “(B) the legal authority under which a rule
19 may be proposed, including whether a rule mak-
20 ing is required by statute, and if so, whether by
21 a specific date, or whether the agency has dis-
22 cretion to commence a rule making;

23 “(C) preliminary information available to
24 the agency concerning the other considerations
25 specified in subsection (b);

1 “(D) in the case of a rule that involves a
2 novel legal or policy issue arising out of statu-
3 tory mandates, the nature of and potential rea-
4 sons to adopt the novel legal or policy position
5 upon which the agency may base a proposed
6 rule; and

7 “(E) an achievable objective for the rule
8 and metrics by which the agency will measure
9 progress toward that objective;

10 “(2) solicit written data, views or argument
11 from interested persons concerning the information
12 and issues addressed in the advance notice; and

13 “(3) provide for a period of not fewer than 60
14 days for interested persons to submit such written
15 data, views, or argument to the agency.

16 “(d) NOTICES OF PROPOSED RULE MAKING; DETER-
17 MINATIONS OF OTHER AGENCY COURSE.—(1) Before it
18 determines to propose a rule, and following completion of
19 procedures under subsection (c), if applicable, the agency
20 shall consult with the Administrator of the Office of Infor-
21 mation and Regulatory Affairs. If the agency thereafter
22 determines to propose a rule, the agency shall publish a
23 notice of proposed rule making, which shall include—

24 “(A) a statement of the time, place, and nature
25 of public rule making proceedings;

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

3 “(C) the terms of the proposed rule;

4 “(D) a description of information known to the
5 agency on the subject and issues of the proposed
6 rule, including but not limited to—

7 “(i) a summary of information known to
8 the agency concerning the considerations speci-
9 fied in subsection (b);

10 “(ii) a summary of additional information
11 the agency provided to and obtained from inter-
12 ested persons under subsection (c);

13 “(iii) a summary of any preliminary risk
14 assessment or regulatory impact analysis per-
15 formed by the agency; and

16 “(iv) information specifically identifying all
17 data, studies, models, and other evidence or in-
18 formation considered or used by the agency in
19 connection with its determination to propose
20 the rule;

21 “(E)(i) a reasoned preliminary determination of
22 need for the rule based on the information described
23 under subparagraph (D);

24 “(ii) an additional statement of whether a rule
25 is required by statute; and

1 “(iii) an achievable objective for the rule and
2 metrics by which the agency will measure progress
3 toward that objective;

4 “(F) a reasoned preliminary determination that
5 the benefits of the proposed rule meet the relevant
6 statutory objectives and justify the costs of the pro-
7 posed rule (including all costs to be considered under
8 subsection (b)(6)), based on the information de-
9 scribed under subparagraph (D);

10 “(G) a discussion of—

11 “(i) the alternatives to the proposed rule,
12 and other alternative responses, considered by
13 the agency under subsection (b);

14 “(ii) the costs and benefits of those alter-
15 natives (including all costs to be considered
16 under subsection (b)(6));

17 “(iii) whether those alternatives meet rel-
18 evant statutory objectives; and

19 “(iv) why the agency did not propose any
20 of those alternatives; and

21 “(H)(i) a statement of whether existing rules
22 have created or contributed to the problem the agen-
23 cy seeks to address with the proposed rule; and

24 “(ii) if so, whether or not the agency proposes
25 to amend or rescind any such rules, and why.

1 All information provided to or considered by the agency,
2 and steps to obtain information by the agency, in connec-
3 tion with its determination to propose the rule, including
4 any preliminary risk assessment or regulatory impact
5 analysis prepared by the agency and all other information
6 prepared or described by the agency under subparagraph
7 (D) and, at the discretion of the President or the Adminis-
8 trator of the Office of Information and Regulatory Affairs,
9 information provided by that Office in consultations with
10 the agency, shall be placed in the docket for the proposed
11 rule and made accessible to the public by electronic means
12 and otherwise for the public's use when the notice of pro-
13 posed rule making is published.

14 “(2)(A) If the agency undertakes procedures under
15 subsection (c) and determines thereafter not to propose
16 a rule, the agency shall, following consultation with the
17 Office of Information and Regulatory Affairs, publish a
18 notice of determination of other agency course. A notice
19 of determination of other agency course shall include in-
20 formation required by paragraph (1)(D) to be included in
21 a notice of proposed rule making and a description of the
22 alternative response the agency determined to adopt.

23 “(B) If in its determination of other agency course
24 the agency makes a determination to amend or rescind
25 an existing rule, the agency need not undertake additional

1 proceedings under subsection (c) before it publishes a no-
2 tice of proposed rule making to amend or rescind the exist-
3 ing rule.

4 All information provided to or considered by the agency,
5 and steps to obtain information by the agency, in connec-
6 tion with its determination of other agency course, includ-
7 ing but not limited to any preliminary risk assessment or
8 regulatory impact analysis prepared by the agency and all
9 other information that would be required to be prepared
10 or described by the agency under paragraph (1)(D) if the
11 agency had determined to publish a notice of proposed rule
12 making and, at the discretion of the President or the Ad-
13 ministrator of the Office of Information and Regulatory
14 Affairs, information provided by that Office in consulta-
15 tions with the agency, shall be placed in the docket for
16 the determination and made accessible to the public by
17 electronic means and otherwise for the public's use when
18 the notice of determination is published.

19 “(3) After notice of proposed rule making required
20 by this section, the agency shall provide interested persons
21 an opportunity to participate in the rule making through
22 submission of written data, views, or arguments with or
23 without opportunity for oral presentation, except that—

24 “(A) if a hearing is required under paragraph
25 (4)(B) or subsection (e), opportunity for oral presen-

1 tation shall be provided pursuant to that require-
2 ment; or

3 “(B) when other than under subsection (e) of
4 this section rules are required by statute or at the
5 discretion of the agency to be made on the record
6 after opportunity for an agency hearing, sections
7 556 and 557 shall apply, and paragraph (4), the re-
8 quirements of subsection (e) to receive comment out-
9 side of the procedures of sections 556 and 557, and
10 the petition procedures of subsection (e)(6) shall not
11 apply.

12 The agency shall provide not fewer than 60 days for inter-
13 ested persons to submit written data, views, or argument
14 (or 120 days in the case of a proposed major or high-
15 impact rule).

16 “(4)(A) Within 30 days of publication of notice of
17 proposed rule making, a member of the public may peti-
18 tion for a hearing in accordance with section 556 to deter-
19 mine whether any evidence or other information upon
20 which the agency bases the proposed rule fails to comply
21 with the Information Quality Act.

22 “(B)(i) The agency may, upon review of the petition,
23 determine without further process to exclude from the rule
24 making the evidence or other information that is the sub-
25 ject of the petition and, if appropriate, withdraw the pro-

1 posed rule. The agency shall promptly publish any such
2 determination.

3 “(ii) If the agency does not resolve the petition under
4 the procedures of clause (i), it shall grant any such peti-
5 tion that presents a prima facie case that evidence or other
6 information upon which the agency bases the proposed
7 rule fails to comply with the Information Quality Act, hold
8 the requested hearing not later than 30 days after receipt
9 of the petition, provide a reasonable opportunity for cross-
10 examination at the hearing, and decide the issues pre-
11 sented by the petition not later than 60 days after receipt
12 of the petition. The agency may deny any petition that
13 it determines does not present such a prima facie case.

14 “(C) There shall be no judicial review of the agency’s
15 disposition of issues considered and decided or determined
16 under subparagraph (B)(ii) until judicial review of the
17 agency’s final action. There shall be no judicial review of
18 an agency’s determination to withdraw a proposed rule
19 under subparagraph (B)(i) on the basis of the petition.

20 “(D) Failure to petition for a hearing under this
21 paragraph shall not preclude judicial review of any claim
22 based on the Information Quality Act under chapter 7 of
23 this title.

24 “(e) HEARINGS FOR HIGH-IMPACT RULES.—Fol-
25 lowing notice of a proposed rule making, receipt of com-

1 ments on the proposed rule, and any hearing held under
2 subsection (d)(4), and before adoption of any high-impact
3 rule, the agency shall hold a hearing in accordance with
4 sections 556 and 557, unless such hearing is waived by
5 all participants in the rule making other than the agency.
6 The agency shall provide a reasonable opportunity for
7 cross-examination at such hearing. The hearing shall be
8 limited to the following issues of fact, except that partici-
9 pants at the hearing other than the agency may waive de-
10 termination of any such issue:

11 “(1) Whether the agency’s asserted factual
12 predicate for the rule is supported by the evidence.

13 “(2) Whether there is an alternative to the pro-
14 posed rule that would achieve the relevant statutory
15 objectives at a lower cost (including all costs to be
16 considered under subsection (b)(6)) than the pro-
17 posed rule.

18 “(3) If there is more than one alternative to the
19 proposed rule that would achieve the relevant statu-
20 tory objectives at a lower cost than the proposed
21 rule, which alternative would achieve the relevant
22 statutory objectives at the lowest cost.

23 “(4) Whether, if the agency proposes to adopt
24 a rule that is more costly than the least costly alter-
25 native that would achieve the relevant statutory ob-

1 jectives (including all costs to be considered under
2 subsection (b)(6)), the additional benefits of the
3 more costly rule exceed the additional costs of the
4 more costly rule.

5 “(5) Whether the evidence and other informa-
6 tion upon which the agency bases the proposed rule
7 meets the requirements of the Information Quality
8 Act.

9 “(6) Upon petition by an interested person who
10 has participated in the rule making, other issues rel-
11 evant to the rule making, unless the agency deter-
12 mines that consideration of the issues at the hearing
13 would not advance consideration of the rule or
14 would, in light of the nature of the need for agency
15 action, unreasonably delay completion of the rule
16 making. An agency shall grant or deny a petition
17 under this paragraph within 30 days of its receipt
18 of the petition.

19 No later than 45 days before any hearing held under this
20 subsection or sections 556 and 557, the agency shall pub-
21 lish in the Federal Register a notice specifying the pro-
22 posed rule to be considered at such hearing, the issues
23 to be considered at the hearing, and the time and place
24 for such hearing, except that such notice may be issued

1 not later than 15 days before a hearing held under sub-
2 section (d)(4)(B).

3 “(f) FINAL RULES.—(1) The agency shall adopt a
4 rule only following consultation with the Administrator of
5 the Office of Information and Regulatory Affairs to facili-
6 tate compliance with applicable rule making requirements.

7 “(2) The agency shall adopt a rule only on the basis
8 of the best reasonably obtainable scientific, technical, eco-
9 nomic, and other evidence and information concerning the
10 need for, consequences of, and alternatives to the rule.

11 “(3)(A) Except as provided in subparagraph (B), the
12 agency shall adopt the least costly rule considered during
13 the rule making (including all costs to be considered under
14 subsection (b)(6)) that meets relevant statutory objectives.

15 “(B) The agency may adopt a rule that is more costly
16 than the least costly alternative that would achieve the rel-
17 evant statutory objectives only if the additional benefits
18 of the more costly rule justify its additional costs and only
19 if the agency explains its reason for doing so based on
20 interests of public health, safety or welfare that are clearly
21 within the scope of the statutory provision authorizing the
22 rule.

23 “(4) When it adopts a final rule, the agency shall
24 publish a notice of final rule making. The notice shall in-
25 clude—

1 “(A) a concise, general statement of the rule’s
2 basis and purpose;

3 “(B) the agency’s reasoned final determination
4 of need for a rule to address the problem the agency
5 seeks to address with the rule, including a statement
6 of whether a rule is required by statute and a sum-
7 mary of any final risk assessment or regulatory im-
8 pact analysis prepared by the agency;

9 “(C) the agency’s reasoned final determination
10 that the benefits of the rule meet the relevant statu-
11 tory objectives and justify the rule’s costs (including
12 all costs to be considered under subsection (b)(6));

13 “(D) the agency’s reasoned final determination
14 not to adopt any of the alternatives to the proposed
15 rule considered by the agency during the rule mak-
16 ing, including—

17 “(i) the agency’s reasoned final determina-
18 tion that no alternative considered achieved the
19 relevant statutory objectives with lower costs
20 (including all costs to be considered under sub-
21 section (b)(6)) than the rule; or

22 “(ii) the agency’s reasoned determination
23 that its adoption of a more costly rule complies
24 with subsection (f)(3)(B);

1 “(E) the agency’s reasoned final determina-
2 tion—

3 “(i) that existing rules have not created or
4 contributed to the problem the agency seeks to
5 address with the rule; or

6 “(ii) that existing rules have created or
7 contributed to the problem the agency seeks to
8 address with the rule, and, if so—

9 “(I) why amendment or rescission of
10 such existing rules is not alone sufficient
11 to respond to the problem; and

12 “(II) whether and how the agency in-
13 tends to amend or rescind the existing rule
14 separate from adoption of the rule;

15 “(F) the agency’s reasoned final determination
16 that the evidence and other information upon which
17 the agency bases the rule complies with the Informa-
18 tion Quality Act;

19 “(G) the agency’s reasoned final determination
20 that the rule meets the objectives that the agency
21 identified in subsection (d)(1)(E)(iii) or that other
22 objectives are more appropriate in light of the full
23 administrative record and the rule meets those ob-
24 jectives;

1 “(H) the agency’s reasoned final determination
2 that it did not deviate from the metrics the agency
3 included in subsection (d)(1)(E)(iii) or that other
4 metrics are more appropriate in light of the full ad-
5 ministrative record and the agency did not deviate
6 from those metrics;

7 “(I)(i) for any major rule, high-impact rule, or
8 negative-impact on jobs and wages rule, the agency’s
9 plan for review of the rule no less than every ten
10 years to determine whether, based upon evidence,
11 there remains a need for the rule, whether the rule
12 is in fact achieving statutory objectives, whether the
13 rule’s benefits continue to justify its costs, and
14 whether the rule can be modified or rescinded to re-
15 duce costs while continuing to achieve statutory ob-
16 jectives; and

17 “(ii) review of a rule under a plan required by
18 clause (i) of this subparagraph shall take into ac-
19 count the factors and criteria set forth in sub-
20 sections (b) through (f) of section 553 of this title;
21 and

22 “(J) for any negative-impact on jobs and wages
23 rule, a statement that the head of the agency that
24 made the rule approved the rule knowing about the
25 findings and determination of the agency or the Ad-

1 administrator of the Office of Information and Regu-
2 latory Affairs that qualified the rule as a negative
3 impact on jobs and wages rule.

4 All information considered by the agency in connection
5 with its adoption of the rule, and, at the discretion of the
6 President or the Administrator of the Office of Informa-
7 tion and Regulatory Affairs, information provided by that
8 Office in consultations with the agency, shall be placed
9 in the docket for the rule and made accessible to the public
10 for the public's use no later than when the rule is adopted.

11 “(g) EXCEPTIONS FROM NOTICE AND HEARING RE-
12 QUIREMENTS.—(1) Except when notice or hearing is re-
13 quired by statute, the following do not apply to interpre-
14 tive rules, general statements of policy, or rules of agency
15 organization, procedure, or practice:

16 “(A) Subsections (c) through (e).

17 “(B) Paragraphs (1) through (3) of subsection
18 (f).

19 “(C) Subparagraphs (B) through (H) of sub-
20 section (f)(4).

21 “(2)(A) When the agency for good cause, based upon
22 evidence, finds (and incorporates the finding and a brief
23 statement of reasons therefor in the rules issued) that
24 compliance with subsection (c), (d), or (e) or requirements
25 to render final determinations under subsection (f) of this

1 section before the issuance of an interim rule is impracti-
2 cable or contrary to the public interest, including interests
3 of national security, such subsections or requirements to
4 render final determinations shall not apply to the agency's
5 adoption of an interim rule.

6 “(B) If, following compliance with subparagraph (A)
7 of this paragraph, the agency adopts an interim rule, it
8 shall commence proceedings that comply fully with sub-
9 sections (d) through (f) of this section immediately upon
10 publication of the interim rule, shall treat the publication
11 of the interim rule as publication of a notice of proposed
12 rule making and shall not be required to issue supple-
13 mental notice other than to complete full compliance with
14 subsection (d). No less than 270 days from publication
15 of the interim rule (or 18 months in the case of a major
16 rule or high-impact rule), the agency shall complete rule
17 making under subsections (d) through (f) of this sub-
18 section and take final action to adopt a final rule or re-
19 scind the interim rule. If the agency fails to take timely
20 final action, the interim rule will cease to have the effect
21 of law.

22 “(C) Other than in cases involving interests of na-
23 tional security, upon the agency's publication of an interim
24 rule without compliance with subsection (c), (d), or (e) or
25 requirements to render final determinations under sub-

1 section (f) of this section, an interested party may seek
2 immediate judicial review under chapter 7 of this title of
3 the agency’s determination to adopt such interim rule. The
4 record on such review shall include all documents and in-
5 formation considered by the agency and any additional in-
6 formation presented by a party that the court determines
7 necessary to consider to assure justice.

8 “(3) When the agency for good cause finds (and in-
9 corporates the finding and a brief statement of reasons
10 therefor in the rules issued) that notice and public proce-
11 dure thereon are unnecessary, including because agency
12 rule making is undertaken only to correct a de minimis
13 technical or clerical error in a previously issued rule or
14 for other noncontroversial purposes, the agency may pub-
15 lish a rule without compliance with subsection (c), (d), (e),
16 or (f)(1)–(3) and (f)(4)(B)–(F). If the agency receives sig-
17 nificant adverse comment within 60 days after publication
18 of the rule, it shall treat the notice of the rule as a notice
19 of proposed rule making and complete rule making in com-
20 pliance with subsections (d) and (f).

21 “(h) ADDITIONAL REQUIREMENTS FOR HEARINGS.—
22 When a hearing is required under subsection (e) or is oth-
23 erwise required by statute or at the agency’s discretion
24 before adoption of a rule, the agency shall comply with
25 the requirements of sections 556 and 557 in addition to

1 the requirements of subsection (f) in adopting the rule and
2 in providing notice of the rule's adoption.

3 “(i) DATE OF PUBLICATION OF RULE.—The required
4 publication or service of a substantive final or interim rule
5 shall be made not less than 30 days before the effective
6 date of the rule, except—

7 “(1) a substantive rule which grants or recog-
8 nizes an exemption or relieves a restriction;

9 “(2) interpretive rules and statements of policy;
10 or

11 “(3) as otherwise provided by the agency for
12 good cause found and published with the rule.

13 “(j) RIGHT TO PETITION.—Each agency shall give
14 an interested person the right to petition for the issuance,
15 amendment, or repeal of a rule.

16 “(k) RULE MAKING GUIDELINES.—(1)(A) The Ad-
17 ministrator of the Office of Information and Regulatory
18 Affairs shall establish guidelines for the assessment, in-
19 cluding quantitative and qualitative assessment, of the
20 costs and benefits of proposed and final rules and other
21 economic issues or issues related to risk that are relevant
22 to rule making under this title. The rigor of cost-benefit
23 analysis required by such guidelines shall be commensu-
24 rate, in the Administrator's determination, with the eco-
25 nomic impact of the rule.

1 “(B) To ensure that agencies use the best available
2 techniques to quantify and evaluate anticipated present
3 and future benefits, costs, other economic issues, and risks
4 as accurately as possible, the Administrator of the Office
5 of Information and Regulatory Affairs shall regularly up-
6 date guidelines established under paragraph (1)(A) of this
7 subsection.

8 “(2) The Administrator of the Office of Information
9 and Regulatory Affairs shall also issue guidelines to pro-
10 mote coordination, simplification and harmonization of
11 agency rules during the rule making process and other-
12 wise. Such guidelines shall assure that each agency avoids
13 regulations that are inconsistent or incompatible with, or
14 duplicative of, its other regulations and those of other
15 Federal agencies and drafts its regulations to be simple
16 and easy to understand, with the goal of minimizing the
17 potential for uncertainty and litigation arising from such
18 uncertainty.

19 “(3) To ensure consistency in Federal rule making,
20 the Administrator of the Office of Information and Regu-
21 latory Affairs shall—

22 “(A) issue guidelines and otherwise take action
23 to ensure that rule makings conducted in whole or
24 in part under procedures specified in provisions of
25 law other than those of subchapter II of this title

1 conform to the fullest extent allowed by law with the
2 procedures set forth in section 553 of this title; and

3 “(B) issue guidelines for the conduct of hear-
4 ings under subsections 553(d)(4) and 553(e) of this
5 section, including to assure a reasonable opportunity
6 for cross-examination. Each agency shall adopt regu-
7 lations for the conduct of hearings consistent with
8 the guidelines issued under this subparagraph.

9 “(4) The Administrator of the Office of Information
10 and Regulatory Affairs shall issue guidelines pursuant to
11 the Information Quality Act to apply in rule making pro-
12 ceedings under sections 553, 556, and 557 of this title.
13 In all cases, such guidelines, and the Administrator’s spe-
14 cific determinations regarding agency compliance with
15 such guidelines, shall be entitled to judicial deference.

16 “(l) INCLUSION IN THE RECORD OF CERTAIN DOCU-
17 MENTS AND INFORMATION.—The agency shall include in
18 the record for a rule making, and shall make available by
19 electronic means and otherwise, all documents and infor-
20 mation prepared or considered by the agency during the
21 proceeding, including, at the discretion of the President
22 or the Administrator of the Office of Information and Reg-
23 ulatory Affairs, documents and information communicated
24 by that Office during consultation with the Agency.

1 “(m) MONETARY POLICY EXEMPTION.—Nothing in
 2 subsection (b)(6), subparagraphs (F) and (G) of sub-
 3 section (d)(1), subsection (e), subsection (f)(3), and sub-
 4 paragraphs (C) and (D) of subsection (f)(5) shall apply
 5 to rule makings that concern monetary policy proposed or
 6 implemented by the Board of Governors of the Federal
 7 Reserve System or the Federal Open Market Committee.”.

8 **SEC. 204. AGENCY GUIDANCE; PROCEDURES TO ISSUE**
 9 **MAJOR GUIDANCE; PRESIDENTIAL AUTHOR-**
 10 **ITY TO ISSUE GUIDELINES FOR ISSUANCE OF**
 11 **GUIDANCE.**

12 (a) IN GENERAL.—Chapter 5 of title 5, United
 13 States Code, is amended by inserting after section 553 the
 14 following new section:

15 **“§ 553a. Agency guidance; procedures to issue major**
 16 **guidance; authority to issue guidelines**
 17 **for issuance of guidance**

18 “(a) Before issuing any major guidance, or guidance
 19 that involves a novel legal or policy issue arising out of
 20 statutory mandates, an agency shall—

21 “(1) make and document a reasoned determina-
 22 tion that—

23 “(A) assures that such guidance is under-
 24 standable and complies with relevant statutory

1 objectives and regulatory provisions (including
2 any statutory deadlines for agency action);

3 “(B) summarizes the evidence and data on
4 which the agency will base the guidance;

5 “(C) identifies the costs and benefits (in-
6 cluding all costs to be considered during a rule
7 making under section 553(b) of this title) of
8 conduct conforming to such guidance and
9 assures that such benefits justify such costs;
10 and

11 “(D) describes alternatives to such guid-
12 ance and their costs and benefits (including all
13 costs to be considered during a rule making
14 under section 553(b) of this title) and explains
15 why the agency rejected those alternatives; and

16 “(2) confer with the Administrator of the Office
17 of Information and Regulatory Affairs on the
18 issuance of such guidance to assure that the guid-
19 ance is reasonable, understandable, consistent with
20 relevant statutory and regulatory provisions and re-
21 quirements or practices of other agencies, does not
22 produce costs that are unjustified by the guidance’s
23 benefits, and is otherwise appropriate.

24 Upon issuing major guidance, or guidance that involves
25 a novel legal or policy issue arising out of statutory man-

1 dates, the agency shall publish the documentation required
2 by subparagraph (1) by electronic means and otherwise.

3 “(b) Agency guidance—

4 “(1) is not legally binding and may not be re-
5 lied upon by an agency as legal grounds for agency
6 action;

7 “(2) shall state in a plain, prominent and per-
8 manent manner that it is not legally binding; and

9 “(3) shall, at the time it is issued or upon re-
10 quest, be made available by the issuing agency to in-
11 terested persons and the public by electronic means
12 and otherwise.

13 Agencies shall avoid the issuance of guidance that is in-
14 consistent or incompatible with, or duplicative of, the
15 agency’s governing statutes or regulations, with the goal
16 of minimizing the potential for uncertainty and litigation
17 arising from such uncertainty.

18 “(c) The Administrator of the Office of Information
19 and Regulatory Affairs shall have authority to issue guide-
20 lines for use by the agencies in the issuance of major guid-
21 ance and other guidance. Such guidelines shall assure that
22 each agency avoids issuing guidance documents that are
23 inconsistent or incompatible with, or duplicative of, the
24 law, its other regulations, or the regulations of other Fed-
25 eral agencies and drafts its guidance documents to be sim-

1 ple and easy to understand, with the goal of minimizing
 2 the potential for uncertainty and litigation arising from
 3 such uncertainty.”.

4 (b) CLERICAL AMENDMENT.—The table of sections
 5 for chapter 5 of title 5, United States Code, is amended
 6 by inserting after the item relating to section 553 the fol-
 7 lowing new item:

“553a. Agency guidance; procedures to issue major guidance; authority to issue
 guidelines for issuance of guidance.”.

8 **SEC. 205. HEARINGS; PRESIDING EMPLOYEES; POWERS AND**
 9 **DUTIES; BURDEN OF PROOF; EVIDENCE;**
 10 **RECORD AS BASIS OF DECISION.**

11 Section 556 of title 5, United States Code, is amend-
 12 ed by striking subsection (e) and inserting the following:

13 “(e)(1) The transcript of testimony and exhibits, to-
 14 gether with all papers and requests filed in the proceeding,
 15 constitutes the exclusive record for decision in accordance
 16 with section 557 and shall be made available to the parties
 17 and the public by electronic means and, upon payment of
 18 lawfully prescribed costs, otherwise. When an agency deci-
 19 sion rests on official notice of a material fact not appear-
 20 ing in the evidence in the record, a party is entitled, on
 21 timely request, to an opportunity to show the contrary.

22 “(2) Notwithstanding paragraph (1) of this sub-
 23 section, in a proceeding held under this section pursuant
 24 to section 553(d)(4) or 553(e), the record for decision

1 shall also include any information that is part of the
2 record of proceedings under section 553.

3 “(f) When an agency conducts rule making under this
4 section and section 557 directly after concluding pro-
5 ceedings upon an advance notice of proposed rule making
6 under section 553(c), the matters to be considered and
7 determinations to be made shall include, among other rel-
8 evant matters and determinations, the matters and deter-
9 minations described in subsections (b) and (f) of section
10 553.

11 “(g) Upon receipt of a petition for a hearing under
12 this section, the agency shall grant the petition in the case
13 of any major rule, unless the agency reasonably deter-
14 mines that a hearing would not advance consideration of
15 the rule or would, in light of the need for agency action,
16 unreasonably delay completion of the rule making. The
17 agency shall publish its decision to grant or deny the peti-
18 tion when it renders the decision, including an explanation
19 of the grounds for decision. The information contained in
20 the petition shall in all cases be included in the adminis-
21 trative record. This subsection shall not apply to rule mak-
22 ings that concern monetary policy proposed or imple-
23 mented by the Board of Governors of the Federal Reserve
24 System or the Federal Open Market Committee.”.

1 **SEC. 206. ACTIONS REVIEWABLE.**

2 Section 704 of title 5, United States Code, is amend-
3 ed—

4 (1) by striking “Agency action made” and in-
5 serting “(a) Agency action made”; and

6 (2) by adding at the end the following: “Denial
7 by an agency of a correction request or, where ad-
8 ministrative appeal is provided for, denial of an ap-
9 peal, under an administrative mechanism described
10 in subsection (b)(2)(B) of the Information Quality
11 Act, or the failure of an agency within 90 days to
12 grant or deny such request or appeal, shall be final
13 action for purposes of this section.

14 “(b) Other than in cases involving interests of na-
15 tional security, notwithstanding subsection (a) of this sec-
16 tion, upon the agency’s publication of an interim rule with-
17 out compliance with section 553(c), (d), or (e) or require-
18 ments to render final determinations under subsection (f)
19 of section 553, an interested party may seek immediate
20 judicial review under this chapter of the agency’s deter-
21 mination to adopt such rule on an interim basis. Review
22 shall be limited to whether the agency abused its discre-
23 tion to adopt the interim rule without compliance with sec-
24 tion 553(c), (d), or (e) or without rendering final deter-
25 minations under subsection (f) of section 553.”.

1 **SEC. 207. SCOPE OF REVIEW.**

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

4 (1) by striking “To the extent necessary” and
5 inserting “(a) To the extent necessary”;

6 (2) in paragraph (2)(A) of subsection (a) (as
7 designated by paragraph (1) of this section), by in-
8 serting after “in accordance with law” the following:
9 “(including the Information Quality Act)”; and

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

11 “(b) The court shall not defer to the agency’s—

12 “(1) interpretation of an agency rule if the
13 agency did not comply with the procedures of section
14 553 or sections 556–557 of chapter 5 of this title to
15 issue the interpretation;

16 “(2) determination of the costs and benefits or
17 other economic or risk assessment of the action, if
18 the agency failed to conform to guidelines on such
19 determinations and assessments established by the
20 Administrator of the Office of Information and Reg-
21 ulatory Affairs under section 553(k);

22 “(3) determinations made in the adoption of an
23 interim rule; or

24 “(4) guidance.

25 “(c) The court shall review agency denials of petitions
26 under section 553(e)(6) or any other petition for a hearing

1 under sections 556 and 557 for abuse of agency discre-
2 tion.”.

3 **SEC. 208. ADDED DEFINITION.**

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

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

8 (2) in paragraph (2), by striking the period at
9 the end, and inserting “; and”; and

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

11 “(3) ‘substantial evidence’ means such relevant
12 evidence as a reasonable mind might accept as ade-
13 quate to support a conclusion in light of the record
14 considered as a whole, taking into account whatever
15 in the record fairly detracts from the weight of the
16 evidence relied upon by the agency to support its de-
17 cision.”.

18 **SEC. 209. EFFECTIVE DATE.**

19 The amendments made by this title to—

20 (1) sections 553, 556, and 704 of title 5,
21 United States Code;

22 (2) subsection (b) of section 701 of such title;

23 (3) paragraphs (2) and (3) of section 706(b) of
24 such title; and

25 (4) subsection (c) of section 706 of such title,

1 shall not apply to any rule makings pending or completed
2 on the date of enactment of this title.

3 **TITLE III—REGULATORY FLEXI-** 4 **BILITY IMPROVEMENTS ACT**

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

6 This title may be cited as the “Regulatory Flexibility
7 Improvements Act of 2014”.

8 **SEC. 302. CLARIFICATION AND EXPANSION OF RULES COV-** 9 **ERED BY THE REGULATORY FLEXIBILITY** 10 **ACT.**

11 (a) IN GENERAL.—Paragraph (2) of section 601 of
12 title 5, United States Code, is amended to read as follows:

13 “(2) RULE.—The term ‘rule’ has the meaning
14 given such term in section 551(4) of this title, ex-
15 cept that such term does not include a rule per-
16 taining to the protection of the rights of and benefits
17 for veterans or a rule of particular (and not general)
18 applicability relating to rates, wages, corporate or fi-
19 nancial structures or reorganizations thereof, prices,
20 facilities, appliances, services, or allowances therefor
21 or to valuations, costs or accounting, or practices re-
22 lating to such rates, wages, structures, prices, appli-
23 ances, services, or allowances.”.

24 (b) INCLUSION OF RULES WITH INDIRECT EF-
25 FECTS.—Section 601 of title 5, United States Code, is

1 amended by adding at the end the following new para-
2 graph:

3 “(9) ECONOMIC IMPACT.—The term ‘economic
4 impact’ means, with respect to a proposed or final
5 rule—

6 “(A) any direct economic effect on small
7 entities of such rule; and

8 “(B) any indirect economic effect (includ-
9 ing compliance costs and effects on revenue) on
10 small entities which is reasonably foreseeable
11 and results from such rule (without regard to
12 whether small entities will be directly regulated
13 by the rule).”.

14 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
15 FECTS.—

16 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
17 YSIS.—Subsection (c) of section 603 of title 5,
18 United States Code, is amended by striking the first
19 sentence and inserting “Each initial regulatory flexi-
20 bility analysis shall also contain a detailed descrip-
21 tion of alternatives to the proposed rule which mini-
22 mize any adverse significant economic impact or
23 maximize any beneficial significant economic impact
24 on small entities.”.

1 (2) FINAL REGULATORY FLEXIBILITY ANAL-
2 YSIS.—The first paragraph (6) of section 604(a) of
3 title 5, United States Code, is amended by striking
4 “minimize the significant economic impact” and in-
5 serting “minimize the adverse significant economic
6 impact or maximize the beneficial significant eco-
7 nomic impact”.

8 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
9 NIZATIONS.—Paragraph (5) of section 601 of title 5,
10 United States Code, is amended by inserting “and tribal
11 organizations (as defined in section 4(l) of the Indian Self-
12 Determination and Education Assistance Act (25 U.S.C.
13 450b(l))),” after “special districts,”.

14 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
15 FORMAL RULEMAKING.—

16 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
17 YSIS.—Subsection (a) of section 603 of title 5,
18 United States Code, is amended in the first sen-
19 tence—

20 (A) by striking “or” after “proposed
21 rule,”; and

22 (B) by inserting “or publishes a revision or
23 amendment to a land management plan,” after
24 “United States,”.

1 (2) FINAL REGULATORY FLEXIBILITY ANAL-
2 YSIS.—Subsection (a) of section 604 of title 5,
3 United States Code, is amended in the first sen-
4 tence—

5 (A) by striking “or” after “proposed rule-
6 making,”; and

7 (B) by inserting “or adopts a revision or
8 amendment to a land management plan,” after
9 “section 603(a),”.

10 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
11 tion 601 of title 5, United States Code, is amended
12 by adding at the end the following new paragraph:

13 “(10) LAND MANAGEMENT PLAN.—

14 “(A) IN GENERAL.—The term ‘land man-
15 agement plan’ means—

16 “(i) any plan developed by the Sec-
17 retary of Agriculture under section 6 of
18 the Forest and Rangeland Renewable Re-
19 sources Planning Act of 1974 (16 U.S.C.
20 1604); and

21 “(ii) any plan developed by the Sec-
22 retary of the Interior under section 202 of
23 the Federal Land Policy and Management
24 Act of 1976 (43 U.S.C. 1712).

1 “(B) REVISION.—The term ‘revision’
2 means any change to a land management plan
3 which—

4 “(i) in the case of a plan described in
5 subparagraph (A)(i), is made under section
6 6(f)(5) of the Forest and Rangeland Re-
7 newable Resources Planning Act of 1974
8 (16 U.S.C. 1604(f)(5)); or

9 “(ii) in the case of a plan described in
10 subparagraph (A)(ii), is made under sec-
11 tion 1610.5–6 of title 43, Code of Federal
12 Regulations (or any successor regulation).

13 “(C) AMENDMENT.—The term ‘amend-
14 ment’ means any change to a land management
15 plan which—

16 “(i) in the case of a plan described in
17 subparagraph (A)(i), is made under section
18 6(f)(4) of the Forest and Rangeland Re-
19 newable Resources Planning Act of 1974
20 (16 U.S.C. 1604(f)(4)) and with respect to
21 which the Secretary of Agriculture pre-
22 pares a statement described in section
23 102(2)(C) of the National Environmental
24 Policy Act of 1969 (42 U.S.C.
25 4332(2)(C)); or

1 “(ii) in the case of a plan described in
2 subparagraph (A)(ii), is made under sec-
3 tion 1610.5–5 of title 43, Code of Federal
4 Regulations (or any successor regulation)
5 and with respect to which the Secretary of
6 the Interior prepares a statement described
7 in section 102(2)(C) of the National Envi-
8 ronmental Policy Act of 1969 (42 U.S.C.
9 4332(2)(C)).”.

10 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
11 INVOLVING THE INTERNAL REVENUE LAWS.—

12 (1) IN GENERAL.—Subsection (a) of section
13 603 of title 5, United States Code, is amended by
14 striking the period at the end and inserting “or a
15 recordkeeping requirement, and without regard to
16 whether such requirement is imposed by statute or
17 regulation.”.

18 (2) COLLECTION OF INFORMATION.—Paragraph
19 (7) of section 601 of title 5, United States Code, is
20 amended to read as follows:

21 “(7) COLLECTION OF INFORMATION.—The term
22 ‘collection of information’ has the meaning given
23 such term in section 3502(3) of title 44.”.

1 (3) RECORDKEEPING REQUIREMENT.—Para-
2 graph (8) of section 601 of title 5, United States
3 Code, is amended to read as follows:

4 “(8) RECORDKEEPING REQUIREMENT.—The
5 term ‘recordkeeping requirement’ has the meaning
6 given such term in section 3502(13) of title 44.”.

7 (g) DEFINITION OF SMALL ORGANIZATION.—Para-
8 graph (4) of section 601 of title 5, United States Code,
9 is amended to read as follows:

10 “(4) SMALL ORGANIZATION.—

11 “(A) IN GENERAL.—The term ‘small orga-
12 nization’ means any not-for-profit enterprise
13 which, as of the issuance of the notice of pro-
14 posed rulemaking—

15 “(i) in the case of an enterprise which
16 is described by a classification code of the
17 North American Industrial Classification
18 System, does not exceed the size standard
19 established by the Administrator of the
20 Small Business Administration pursuant to
21 section 3 of the Small Business Act (15
22 U.S.C. 632) for small business concerns
23 described by such classification code; and

24 “(ii) in the case of any other enter-
25 prise, has a net worth that does not exceed

1 \$7,000,000 and has not more than 500
2 employees.

3 “(B) LOCAL LABOR ORGANIZATIONS.—In
4 the case of any local labor organization, sub-
5 paragraph (A) shall be applied without regard
6 to any national or international organization of
7 which such local labor organization is a part.

8 “(C) AGENCY DEFINITIONS.—Subpara-
9 graphs (A) and (B) shall not apply to the ex-
10 tent that an agency, after consultation with the
11 Office of Advocacy of the Small Business Ad-
12 ministration and after opportunity for public
13 comment, establishes one or more definitions
14 for such term which are appropriate to the ac-
15 tivities of the agency and publishes such defini-
16 tions in the Federal Register.”.

17 **SEC. 303. EXPANSION OF REPORT OF REGULATORY**
18 **AGENDA.**

19 Section 602 of title 5, United States Code, is amend-
20 ed—

21 (1) in subsection (a)—

22 (A) in paragraph (2), by striking “, and”
23 at the end and inserting “;”;

24 (B) by redesignating paragraph (3) as
25 paragraph (4); and

1 (C) by inserting after paragraph (2) the
 2 following:

3 “(3) a brief description of the sector of the
 4 North American Industrial Classification System
 5 that is primarily affected by any rule which the
 6 agency expects to propose or promulgate which is
 7 likely to have a significant economic impact on a
 8 substantial number of small entities; and”; and

9 (2) in subsection (c), to read as follows:

10 “(c) Each agency shall prominently display a plain
 11 language summary of the information contained in the
 12 regulatory flexibility agenda published under subsection
 13 (a) on its website within 3 days of its publication in the
 14 Federal Register. The Office of Advocacy of the Small
 15 Business Administration shall compile and prominently
 16 display a plain language summary of the regulatory agen-
 17 das referenced in subsection (a) for each agency on its
 18 website within 3 days of their publication in the Federal
 19 Register.”.

20 **SEC. 304. REQUIREMENTS PROVIDING FOR MORE DE-**
 21 **TAILED ANALYSES.**

22 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
 23 Subsection (b) of section 603 of title 5, United States
 24 Code, is amended to read as follows:

1 “(b) Each initial regulatory flexibility analysis re-
2 quired under this section shall contain a detailed state-
3 ment—

4 “(1) describing the reasons why action by the
5 agency is being considered;

6 “(2) describing the objectives of, and legal basis
7 for, the proposed rule;

8 “(3) estimating the number and type of small
9 entities to which the proposed rule will apply;

10 “(4) describing the projected reporting, record-
11 keeping, and other compliance requirements of the
12 proposed rule, including an estimate of the classes of
13 small entities which will be subject to the require-
14 ment and the type of professional skills necessary
15 for preparation of the report and record;

16 “(5) describing all relevant Federal rules which
17 may duplicate, overlap, or conflict with the proposed
18 rule, or the reasons why such a description could not
19 be provided;

20 “(6) estimating the additional cumulative eco-
21 nomic impact of the proposed rule on small entities
22 beyond that already imposed on the class of small
23 entities by the agency or why such an estimate is
24 not available;

1 “(7) describing any disproportionate economic
2 impact on small entities or a specific class of small
3 entities; and

4 “(8) describing any impairment of the ability of
5 small entities to have access to credit.”.

6 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

7 (1) IN GENERAL.—Section 604(a) of title 5,
8 United States Code, is amended—

9 (A) in paragraph (4), by striking “an ex-
10 planation” and inserting “a detailed expla-
11 nation”;

12 (B) in each of paragraphs (4), (5), and the
13 first paragraph (6), by inserting “detailed” be-
14 fore “description”; and

15 (C) by adding at the end the following:

16 “(7) describing any disproportionate economic
17 impact on small entities or a specific class of small
18 entities.”.

19 (2) INCLUSION OF RESPONSE TO COMMENTS ON
20 CERTIFICATION OF PROPOSED RULE.—Paragraph
21 (2) of section 604(a) of title 5, United States Code,
22 is amended by inserting “(or certification of the pro-
23 posed rule under section 605(b))” after “initial reg-
24 ulatory flexibility analysis”.

1 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—

2 Subsection (b) of section 604 of title 5, United
3 States Code, is amended to read as follows:

4 “(b) The agency shall make copies of the final regu-
5 latory flexibility analysis available to the public, including
6 placement of the entire analysis on the agency’s website,
7 and shall publish in the Federal Register the final regu-
8 latory flexibility analysis, or a summary thereof which in-
9 cludes the telephone number, mailing address, and link to
10 the website where the complete analysis may be ob-
11 tained.”.

12 (c) CROSS-REFERENCES TO OTHER ANALYSES.—

13 Subsection (a) of section 605 of title 5, United States
14 Code, is amended to read as follows:

15 “(a) A Federal agency shall be treated as satisfying
16 any requirement regarding the content of an agenda or
17 regulatory flexibility analysis under section 602, 603, or
18 604, if such agency provides in such agenda or analysis
19 a cross-reference to the specific portion of another agenda
20 or analysis which is required by any other law and which
21 satisfies such requirement.”.

22 (d) CERTIFICATIONS.—Subsection (b) of section 605
23 of title 5, United States Code, is amended—

24 (1) by inserting “detailed” before “statement”
25 the first place it appears; and

1 (2) by inserting “and legal” after “factual”.

2 (e) QUANTIFICATION REQUIREMENTS.—Section 607
3 of title 5, United States Code, is amended to read as fol-
4 lows:

5 **“§ 607. Quantification requirements**

6 “In complying with sections 603 and 604, an agency
7 shall provide—

8 “(1) a quantifiable or numerical description of
9 the effects of the proposed or final rule and alter-
10 natives to the proposed or final rule; or

11 “(2) a more general descriptive statement and
12 a detailed statement explaining why quantification is
13 not practicable or reliable.”.

14 **SEC. 305. REPEAL OF WAIVER AND DELAY AUTHORITY; AD-**
15 **DITIONAL POWERS OF THE CHIEF COUNSEL**
16 **FOR ADVOCACY.**

17 (a) IN GENERAL.—Section 608 is amended to read
18 as follows:

19 **“§ 608. Additional powers of Chief Counsel for Advo-**
20 **cacy**

21 “(a)(1) Not later than 270 days after the date of the
22 enactment of this section, the Chief Counsel for Advocacy
23 of the Small Business Administration shall, after oppor-
24 tunity for notice and comment under section 553, issue
25 rules governing agency compliance with this chapter. The

1 Chief Counsel may modify or amend such rules after no-
2 tice and comment under section 553. This chapter (other
3 than this subsection) shall not apply with respect to the
4 issuance, modification, and amendment of rules under this
5 paragraph.

6 “(2) An agency shall not issue rules which supple-
7 ment the rules issued under subsection (a) unless such
8 agency has first consulted with the Chief Counsel for Ad-
9 vocacy to ensure that such supplemental rules comply with
10 this chapter and the rules issued under paragraph (1).

11 “(b) Notwithstanding any other law, the Chief Coun-
12 sel for Advocacy of the Small Business Administration
13 may intervene in any agency adjudication (unless such
14 agency is authorized to impose a fine or penalty under
15 such adjudication), and may inform the agency of the im-
16 pact that any decision on the record may have on small
17 entities. The Chief Counsel shall not initiate an appeal
18 with respect to any adjudication in which the Chief Coun-
19 sel intervenes under this subsection.

20 “(c) The Chief Counsel for Advocacy may file com-
21 ments in response to any agency notice requesting com-
22 ment, regardless of whether the agency is required to file
23 a general notice of proposed rulemaking under section
24 553.”.

25 (b) CONFORMING AMENDMENTS.—

1 (1) Section 611(a)(1) of such title is amended
2 by striking “608(b),”.

3 (2) Section 611(a)(2) of such title is amended
4 by striking “608(b),”.

5 (3) Section 611(a)(3) of such title is amend-
6 ed—

7 (A) by striking subparagraph (B); and

8 (B) by striking “(3)(A) A small entity”
9 and inserting the following:

10 “(3) A small entity”.

11 **SEC. 306. PROCEDURES FOR GATHERING COMMENTS.**

12 Section 609 of title 5, United States Code, is amend-
13 ed by striking subsection (b) and all that follows through
14 the end of the section and inserting the following:

15 “(b)(1) Prior to publication of any proposed rule de-
16 scribed in subsection (e), an agency making such rule shall
17 notify the Chief Counsel for Advocacy of the Small Busi-
18 ness Administration and provide the Chief Counsel with—

19 “(A) all materials prepared or utilized by the
20 agency in making the proposed rule, including the
21 draft of the proposed rule; and

22 “(B) information on the potential adverse and
23 beneficial economic impacts of the proposed rule on
24 small entities and the type of small entities that
25 might be affected.

1 “(2) An agency shall not be required under para-
2 graph (1) to provide the exact language of any draft if
3 the rule—

4 “(A) relates to the internal revenue laws of the
5 United States; or

6 “(B) is proposed by an independent regulatory
7 agency (as defined in section 3502(5) of title 44).

8 “(c) Not later than 15 days after the receipt of such
9 materials and information under subsection (b), the Chief
10 Counsel for Advocacy of the Small Business Administra-
11 tion shall—

12 “(1) identify small entities or representatives of
13 small entities or a combination of both for the pur-
14 pose of obtaining advice, input, and recommenda-
15 tions from those persons about the potential eco-
16 nomic impacts of the proposed rule and the compli-
17 ance of the agency with section 603; and

18 “(2) convene a review panel consisting of an
19 employee from the Office of Advocacy of the Small
20 Business Administration, an employee from the
21 agency making the rule, and in the case of an agen-
22 cy other than an independent regulatory agency (as
23 defined in section 3502(5) of title 44), an employee
24 from the Office of Information and Regulatory Af-
25 fairs of the Office of Management and Budget to re-

1 view the materials and information provided to the
2 Chief Counsel under subsection (b).

3 “(d)(1) Not later than 60 days after the review panel
4 described in subsection (c)(2) is convened, the Chief Coun-
5 sel for Advocacy of the Small Business Administration
6 shall, after consultation with the members of such panel,
7 submit a report to the agency and, in the case of an agen-
8 cy other than an independent regulatory agency (as de-
9 fined in section 3502(5) of title 44), the Office of Informa-
10 tion and Regulatory Affairs of the Office of Management
11 and Budget.

12 “(2) Such report shall include an assessment of the
13 economic impact of the proposed rule on small entities,
14 including an assessment of the proposed rule’s impact on
15 the cost that small entities pay for energy, an assessment
16 of the proposed rule’s impact on start-up costs for small
17 entities, and a discussion of any alternatives that will min-
18 imize adverse significant economic impacts or maximize
19 beneficial significant economic impacts on small entities.

20 “(3) Such report shall become part of the rulemaking
21 record. In the publication of the proposed rule, the agency
22 shall explain what actions, if any, the agency took in re-
23 sponse to such report.

24 “(e) A proposed rule is described by this subsection
25 if the Administrator of the Office of Information and Reg-

1 ulatory Affairs of the Office of Management and Budget,
2 the head of the agency (or the delegatee of the head of
3 the agency), or an independent regulatory agency deter-
4 mines that the proposed rule is likely to result in—

5 “(1) an annual effect on the economy of
6 \$100,000,000 or more;

7 “(2) a major increase in costs or prices for con-
8 sumers, individual industries, Federal, State, or local
9 governments, tribal organizations, or geographic re-
10 gions;

11 “(3) significant adverse effects on competition,
12 employment, investment, productivity, innovation, or
13 on the ability of United States-based enterprises to
14 compete with foreign-based enterprises in domestic
15 and export markets; or

16 “(4) a significant economic impact on a sub-
17 stantial number of small entities.

18 “(f) Upon application by the agency, the Chief Coun-
19 sel for Advocacy of the Small Business Administration
20 may waive the requirements of subsections (b) through (e)
21 if the Chief Counsel determines that compliance with the
22 requirements of such subsections are impracticable, un-
23 necessary, or contrary to the public interest.

24 “(g) A small entity or a representative of a small enti-
25 ty may submit a request that the agency provide a copy

1 of the report prepared under subsection (d) and all mate-
2 rials and information provided to the Chief Counsel for
3 Advocacy of the Small Business Administration under
4 subsection (b). The agency receiving such request shall
5 provide the report, materials and information to the re-
6 questing small entity or representative of a small entity
7 not later than 10 business days after receiving such re-
8 quest, except that the agency shall not disclose any infor-
9 mation that is prohibited from disclosure to the public
10 pursuant to section 552(b) of this title.”.

11 **SEC. 307. PERIODIC REVIEW OF RULES.**

12 Section 610 of title 5, United States Code, is amend-
13 ed to read as follows:

14 **“§ 610. Periodic review of rules**

15 “(a) Not later than 180 days after the enactment of
16 this section, each agency shall publish in the Federal Reg-
17 ister and place on its website a plan for the periodic review
18 of rules issued by the agency which the head of the agency
19 determines have a significant economic impact on a sub-
20 stantial number of small entities. Such determination shall
21 be made without regard to whether the agency performed
22 an analysis under section 604. The purpose of the review
23 shall be to determine whether such rules should be contin-
24 ued without change, or should be amended or rescinded,
25 consistent with the stated objectives of applicable statutes,

1 to minimize any adverse significant economic impacts or
2 maximize any beneficial significant economic impacts on
3 a substantial number of small entities. Such plan may be
4 amended by the agency at any time by publishing the revi-
5 sion in the Federal Register and subsequently placing the
6 amended plan on the agency’s website.

7 “(b) The plan shall provide for the review of all such
8 agency rules existing on the date of the enactment of this
9 section within 10 years of the date of publication of the
10 plan in the Federal Register and for review of rules adopt-
11 ed after the date of enactment of this section within 10
12 years after the publication of the final rule in the Federal
13 Register. If the head of the agency determines that com-
14 pletion of the review of existing rules is not feasible by
15 the established date, the head of the agency shall so certify
16 in a statement published in the Federal Register and may
17 extend the review for not longer than 2 years after publi-
18 cation of notice of extension in the Federal Register. Such
19 certification and notice shall be sent to the Chief Counsel
20 for Advocacy of the Small Business Administration and
21 the Congress.

22 “(c) The plan shall include a section that details how
23 an agency will conduct outreach to and meaningfully in-
24 clude small businesses (including small business concerns
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-
2 cerns owned and controlled by socially and economically
3 disadvantaged individuals (as such terms are defined in
4 the Small Business Act)) for the purposes of carrying out
5 this section. The agency shall include in this section a plan
6 for how the agency will contact small businesses and gath-
7 er their input on existing agency rules.

8 “(d) Each agency shall annually submit a report re-
9 garding the results of its review pursuant to such plan
10 to the Congress, the Chief Counsel for Advocacy of the
11 Small Business Administration, and, in the case of agen-
12 cies other than independent regulatory agencies (as de-
13 fined in section 3502(5) of title 44) to the Administrator
14 of the Office of Information and Regulatory Affairs of the
15 Office of Management and Budget. Such report shall in-
16 clude the identification of any rule with respect to which
17 the head of the agency made a determination described
18 in paragraph (5) or (6) of subsection (e) and a detailed
19 explanation of the reasons for such determination.

20 “(e) In reviewing a rule pursuant to subsections (a)
21 through (d), the agency shall amend or rescind the rule
22 to minimize any adverse significant economic impact on
23 a substantial number of small entities or disproportionate
24 economic impact on a specific class of small entities, or
25 maximize any beneficial significant economic impact of the

1 rule on a substantial number of small entities to the great-
2 est extent possible, consistent with the stated objectives
3 of applicable statutes. In amending or rescinding the rule,
4 the agency shall consider the following factors:

5 “(1) The continued need for the rule.

6 “(2) The nature of complaints received by the
7 agency from small entities concerning the rule.

8 “(3) Comments by the Regulatory Enforcement
9 Ombudsman and the Chief Counsel for Advocacy of
10 the Small Business Administration.

11 “(4) The complexity of the rule.

12 “(5) The extent to which the rule overlaps, du-
13 plicates, or conflicts with other Federal rules and,
14 unless the head of the agency determines it to be in-
15 feasible, State, territorial, and local rules.

16 “(6) The contribution of the rule to the cumu-
17 lative economic impact of all Federal rules on the
18 class of small entities affected by the rule, unless the
19 head of the agency determines that such calculations
20 cannot be made and reports that determination in
21 the annual report required under subsection (d).

22 “(7) The length of time since the rule has been
23 evaluated or the degree to which technology, eco-
24 nomic conditions, or other factors have changed in
25 the area affected by the rule.

1 “(f) Each year, each agency shall publish in the Fed-
 2 eral Register and on its website a list of rules to be re-
 3 viewed pursuant to such plan. The agency shall include
 4 in the publication a solicitation of public comments on any
 5 further inclusions or exclusions of rules from the list, and
 6 shall respond to such comments. Such publication shall
 7 include a brief description of the rule, the reason why the
 8 agency determined that it has a significant economic im-
 9 pact on a substantial number of small entities (without
 10 regard to whether it had prepared a final regulatory flexi-
 11 bility analysis for the rule), and request comments from
 12 the public, the Chief Counsel for Advocacy of the Small
 13 Business Administration, and the Regulatory Enforce-
 14 ment Ombudsman concerning the enforcement of the
 15 rule.”.

16 **SEC. 308. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
 17 **QUIREMENTS OF THE REGULATORY FLEXI-**
 18 **BILITY ACT AVAILABLE AFTER PUBLICATION**
 19 **OF THE FINAL RULE.**

20 (a) IN GENERAL.—Paragraph (1) of section 611(a)
 21 of title 5, United States Code, is amended by striking
 22 “final agency action” and inserting “such rule”.

23 (b) JURISDICTION.—Paragraph (2) of such section is
 24 amended by inserting “(or which would have such jurisdic-

tion if publication of the final rule constituted final agency action)” after “provision of law,”.

(c) TIME FOR BRINGING ACTION.—Paragraph (3) of such section is amended—

(1) by striking “final agency action” and inserting “publication of the final rule”; and

(2) by inserting “, in the case of a rule for which the date of final agency action is the same date as the publication of the final rule,” after “except that”.

(d) INTERVENTION BY CHIEF COUNSEL FOR ADVOCACY.—Subsection (b) of section 612 of title 5, United States Code, is amended by inserting before the first period “or agency compliance with section 601, 603, 604, 605(b), 609, or 610”.

**SEC. 309. JURISDICTION OF COURT OF APPEALS OVER
RULES IMPLEMENTING THE REGULATORY
FLEXIBILITY ACT.**

(a) IN GENERAL.—Section 2342 of title 28, United States Code, is amended—

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

(2) in paragraph (7), by striking the period at the end and inserting “; and”; and

1 (3) by inserting after paragraph (7) the fol-
2 lowing new paragraph:

3 “(8) all final rules under section 608(a) of title
4 5.”.

5 (b) CONFORMING AMENDMENTS.—Paragraph (3) of
6 section 2341 of title 28, United States Code, is amended—

7 (1) in subparagraph (D), by striking “and” at
8 the end;

9 (2) in subparagraph (E), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following new sub-
12 paragraph:

13 “(F) the Office of Advocacy of the Small
14 Business Administration, when the final rule is
15 under section 608(a) of title 5.”.

16 (c) AUTHORIZATION TO INTERVENE AND COMMENT
17 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
18 DURE.—Subsection (b) of section 612 of title 5, United
19 States Code, is amended by inserting “chapter 5, and
20 chapter 7,” after “this chapter,”.

1 **SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
2 **NESS CONCERN SIZE STANDARDS BY CHIEF**
3 **COUNSEL FOR ADVOCACY.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 3(a)(2) of the Small Business Act (15 U.S.C.
6 632(a)(2)(A)) is amended to read as follows:

7 “(A) IN GENERAL.—In addition to the cri-
8 teria specified in paragraph (1)—

9 “(i) the Administrator may specify de-
10 tailed definitions or standards by which a
11 business concern may be determined to be
12 a small business concern for purposes of
13 this Act or the Small Business Investment
14 Act of 1958; and

15 “(ii) the Chief Counsel for Advocacy
16 may specify such definitions or standards
17 for purposes of any other Act.”.

18 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
19 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
20 632(a)(2)(C)(iii)) is amended to read as follows:

21 “(iii) except in the case of a size
22 standard prescribed by the Administrator,
23 is approved by the Chief Counsel for Advo-
24 cacy.”.

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section
2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
3 amended—

4 (1) by inserting “or Chief Counsel for Advo-
5 cacy, as appropriate” before “shall ensure”; and

6 (2) by inserting “or Chief Counsel for Advo-
7 cacy” before the period at the end.

8 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-
9 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small
10 Business Act (15 U.S.C. 632(a)) is amended by adding
11 at the end the following new paragraph:

12 “(9) JUDICIAL REVIEW OF STANDARDS AP-
13 PROVED BY CHIEF COUNSEL.—In the case of an ac-
14 tion for judicial review of a rule which includes a
15 definition or standard approved by the Chief Counsel
16 for Advocacy under this subsection, the party seek-
17 ing such review shall be entitled to join the Chief
18 Counsel as a party in such action.”.

19 **SEC. 311. CLERICAL AMENDMENTS.**

20 (a) DEFINITIONS.—Section 601 of title 5, United
21 States Code, is amended—

22 (1) in paragraph (1)—

23 (A) by striking the semicolon at the end
24 and inserting a period; and

1 (B) by striking “(1) the term” and insert-
2 ing the following:

3 “(1) AGENCY.—The term”;

4 (2) in paragraph (3)—

5 (A) by striking the semicolon at the end
6 and inserting a period; and

7 (B) by striking “(3) the term” and insert-
8 ing the following:

9 “(3) SMALL BUSINESS.—The term”;

10 (3) in paragraph (5)—

11 (A) by striking the semicolon at the end
12 and inserting a period; and

13 (B) by striking “(5) the term” and insert-
14 ing the following:

15 “(5) SMALL GOVERNMENTAL JURISDICTION.—
16 The term”; and

17 (4) in paragraph (6)—

18 (A) by striking “; and” and inserting a pe-
19 riod; and

20 (B) by striking “(6) the term” and insert-
21 ing the following:

22 “(6) SMALL ENTITY.—The term”.

23 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-
24 CATIONS.—The heading of section 605 of title 5, United
25 States Code, is amended to read as follows:

1 **“§ 605. Incorporations by reference and certi-**
 2 **cations”.**

3 (c) TABLE OF SECTIONS.—The table of sections for
 4 chapter 6 of title 5, United States Code, is amended—

5 (1) by striking the item relating to section 605
 6 and inserting the following new item:

“605. Incorporations by reference and certifications.”;

7 (2) by striking the item relating to section 607
 8 and inserting the following new item:

“607. Quantification requirements.”;

9 and

10 (3) by striking the item relating to section 608
 11 and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy.”.

12 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER
 13 6.—Chapter 6 of title 5, United States Code, is amended
 14 as follows:

15 (1) In section 603, by striking subsection (d).

16 (2) In section 604(a) by striking the second
 17 paragraph (6).

18 **SEC. 312. AGENCY PREPARATION OF GUIDES.**

19 Section 212(a)(5) the Small Business Regulatory En-
 20 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
 21 amended to read as follows:

22 “(5) AGENCY PREPARATION OF GUIDES.—The
 23 agency shall, in its sole discretion, taking into ac-

1 count the subject matter of the rule and the lan-
2 guage of relevant statutes, ensure that the guide is
3 written using sufficiently plain language likely to be
4 understood by affected small entities. Agencies may
5 prepare separate guides covering groups or classes of
6 similarly affected small entities and may cooperate
7 with associations of small entities to distribute such
8 guides. In developing guides, agencies shall solicit
9 input from affected small entities or associations of
10 affected small entities. An agency may prepare
11 guides and apply this section with respect to a rule
12 or a group of related rules.”.

13 **SEC. 313. COMPTROLLER GENERAL REPORT.**

14 Not later than 90 days after the date of enactment
15 of this title, the Comptroller General of the United States
16 shall complete and publish a study that examines whether
17 the Chief Counsel for Advocacy of the Small Business Ad-
18 ministration has the capacity and resources to carry out
19 the duties of the Chief Counsel under this title and the
20 amendments made by this title.

1 **TITLE IV—SUNSHINE FOR REGU-**
2 **LATORY DECREES AND SET-**
3 **TLEMENTS ACT**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the “Sunshine for Regu-
6 latory Decrees and Settlements Act of 2014”.

7 **SEC. 402. DEFINITIONS.**

8 In this title—

9 (1) the terms “agency” and “agency action”
10 have the meanings given those terms under section
11 551 of title 5, United States Code;

12 (2) the term “covered civil action” means a civil
13 action—

14 (A) seeking to compel agency action;

15 (B) alleging that the agency is unlawfully
16 withholding or unreasonably delaying an agency
17 action relating to a regulatory action that would
18 affect the rights of—

19 (i) private persons other than the per-
20 son bringing the action; or

21 (ii) a State, local, or tribal govern-
22 ment; and

23 (C) brought under—

24 (i) chapter 7 of title 5, United States
25 Code; or

1 (ii) any other statute authorizing such
2 an action;

3 (3) the term “covered consent decree” means—

4 (A) a consent decree entered into in a cov-
5 ered civil action; and

6 (B) any other consent decree that requires
7 agency action relating to a regulatory action
8 that affects the rights of—

9 (i) private persons other than the per-
10 son bringing the action; or

11 (ii) a State, local, or tribal govern-
12 ment;

13 (4) the term “covered consent decree or settle-
14 ment agreement” means a covered consent decree
15 and a covered settlement agreement; and

16 (5) the term “covered settlement agreement”
17 means—

18 (A) a settlement agreement entered into in
19 a covered civil action; and

20 (B) any other settlement agreement that
21 requires agency action relating to a regulatory
22 action that affects the rights of—

23 (i) private persons other than the per-
24 son bringing the action; or

1 (ii) a State, local, or tribal govern-
2 ment.

3 **SEC. 403. CONSENT DECREE AND SETTLEMENT REFORM.**

4 (a) PLEADINGS AND PRELIMINARY MATTERS.—

5 (1) IN GENERAL.—In any covered civil action,
6 the agency against which the covered civil action is
7 brought shall publish the notice of intent to sue and
8 the complaint in a readily accessible manner, includ-
9 ing by making the notice of intent to sue and the
10 complaint available online not later than 15 days
11 after receiving service of the notice of intent to sue
12 or complaint, respectively.

13 (2) ENTRY OF A COVERED CONSENT DECREE
14 OR SETTLEMENT AGREEMENT.—A party may not
15 make a motion for entry of a covered consent decree
16 or to dismiss a civil action pursuant to a covered set-
17 tlement agreement until after the end of proceedings
18 in accordance with paragraph (1) and subpara-
19 graphs (A) and (B) of paragraph (2) of subsection
20 (d) or subsection (d)(3)(A), whichever is later.

21 (b) INTERVENTION.—

22 (1) REBUTTABLE PRESUMPTION.—In consid-
23 ering a motion to intervene in a covered civil action
24 or a civil action in which a covered consent decree
25 or settlement agreement has been proposed that is

1 filed by a person who alleges that the agency action
2 in dispute would affect the person, the court shall
3 presume, subject to rebuttal, that the interests of
4 the person would not be represented adequately by
5 the existing parties to the action.

6 (2) STATE, LOCAL, AND TRIBAL GOVERN-
7 MENTS.—In considering a motion to intervene in a
8 covered civil action or a civil action in which a cov-
9 ered consent decree or settlement agreement has
10 been proposed that is filed by a State, local, or tribal
11 government, the court shall take due account of
12 whether the movant—

13 (A) administers jointly with an agency that
14 is a defendant in the action the statutory provi-
15 sions that give rise to the regulatory action to
16 which the action relates; or

17 (B) administers an authority under State,
18 local, or tribal law that would be preempted by
19 the regulatory action to which the action re-
20 lates.

21 (c) SETTLEMENT NEGOTIATIONS.—Efforts to settle
22 a covered civil action or otherwise reach an agreement on
23 a covered consent decree or settlement agreement shall—

24 (1) be conducted pursuant to the mediation or
25 alternative dispute resolution program of the court

1 or by a district judge other than the presiding judge,
2 magistrate judge, or special master, as determined
3 appropriate by the presiding judge; and

4 (2) include any party that intervenes in the ac-
5 tion.

6 (d) PUBLICATION OF AND COMMENT ON COVERED
7 CONSENT DECREES OR SETTLEMENT AGREEMENTS.—

8 (1) IN GENERAL.—Not later than 60 days be-
9 fore the date on which a covered consent decree or
10 settlement agreement is filed with a court, the agen-
11 cy seeking to enter the covered consent decree or
12 settlement agreement shall publish in the Federal
13 Register and online—

14 (A) the proposed covered consent decree or
15 settlement agreement; and

16 (B) a statement providing—

17 (i) the statutory basis for the covered
18 consent decree or settlement agreement;
19 and

20 (ii) a description of the terms of the
21 covered consent decree or settlement agree-
22 ment, including whether it provides for the
23 award of attorneys' fees or costs and, if so,
24 the basis for including the award.

25 (2) PUBLIC COMMENT.—

1 (A) IN GENERAL.—An agency seeking to
2 enter a covered consent decree or settlement
3 agreement shall accept public comment during
4 the period described in paragraph (1) on any
5 issue relating to the matters alleged in the com-
6 plaint in the applicable civil action or addressed
7 or affected by the proposed covered consent de-
8 cree or settlement agreement.

9 (B) RESPONSE TO COMMENTS.—An agency
10 shall respond to any comment received under
11 subparagraph (A).

12 (C) SUBMISSIONS TO COURT.—When mov-
13 ing that the court enter a proposed covered con-
14 sent decree or settlement agreement or for dis-
15 missal pursuant to a proposed covered consent
16 decree or settlement agreement, an agency
17 shall—

18 (i) inform the court of the statutory
19 basis for the proposed covered consent de-
20 cree or settlement agreement and its
21 terms;

22 (ii) submit to the court a summary of
23 the comments received under subparagraph
24 (A) and the response of the agency to the
25 comments;

1 (iii) submit to the court a certified
2 index of the administrative record of the
3 notice and comment proceeding; and

4 (iv) make the administrative record
5 described in clause (iii) fully accessible to
6 the court.

7 (D) INCLUSION IN RECORD.—The court
8 shall include in the court record for a civil ac-
9 tion the certified index of the administrative
10 record submitted by an agency under subpara-
11 graph (C)(iii) and any documents listed in the
12 index which any party or amicus curiae appear-
13 ing before the court in the action submits to the
14 court.

15 (3) PUBLIC HEARINGS PERMITTED.—

16 (A) IN GENERAL.—After providing notice
17 in the Federal Register and online, an agency
18 may hold a public hearing regarding whether to
19 enter into a proposed covered consent decree or
20 settlement agreement.

21 (B) RECORD.—If an agency holds a public
22 hearing under subparagraph (A)—

23 (i) the agency shall—

24 (I) submit to the court a sum-
25 mary of the proceedings;

- 1 (II) submit to the court a cer-
2 tified index of the hearing record; and
3 (III) provide access to the hear-
4 ing record to the court; and
5 (ii) the full hearing record shall be in-
6 cluded in the court record.

7 (4) MANDATORY DEADLINES.—If a proposed
8 covered consent decree or settlement agreement re-
9 quires an agency action by a date certain, the agen-
10 cy shall, when moving for entry of the covered con-
11 sent decree or settlement agreement or dismissal
12 based on the covered consent decree or settlement
13 agreement, inform the court of—

14 (A) any required regulatory action the
15 agency has not taken that the covered consent
16 decree or settlement agreement does not ad-
17 dress;

18 (B) how the covered consent decree or set-
19 tlement agreement, if approved, would affect
20 the discharge of the duties described in sub-
21 paragraph (A); and

22 (C) why the effects of the covered consent
23 decree or settlement agreement on the manner
24 in which the agency discharges its duties is in
25 the public interest.

1 (e) SUBMISSION BY THE GOVERNMENT.—

2 (1) IN GENERAL.—For any proposed covered
3 consent decree or settlement agreement that con-
4 tains a term described in paragraph (2), the Attor-
5 ney General or, if the matter is being litigated inde-
6 pendently by an agency, the head of the agency shall
7 submit to the court a certification that the Attorney
8 General or head of the agency approves the proposed
9 covered consent decree or settlement agreement. The
10 Attorney General or head of the agency shall person-
11 ally sign any certification submitted under this para-
12 graph.

13 (2) TERMS.—A term described in this para-
14 graph is—

15 (A) in the case of a covered consent decree,
16 a term that—

17 (i) converts into a nondiscretionary
18 duty a discretionary authority of an agency
19 to propose, promulgate, revise, or amend
20 regulations;

21 (ii) commits an agency to expend
22 funds that have not been appropriated and
23 that have not been budgeted for the regu-
24 latory action in question;

1 (iii) commits an agency to seek a par-
2 ticular appropriation or budget authoriza-
3 tion;

4 (iv) divests an agency of discretion
5 committed to the agency by statute or the
6 Constitution of the United States, without
7 regard to whether the discretion was
8 granted to respond to changing cir-
9 cumstances, to make policy or managerial
10 choices, or to protect the rights of third
11 parties; or

12 (v) otherwise affords relief that the
13 court could not enter under its own au-
14 thority upon a final judgment in the civil
15 action; or

16 (B) in the case of a covered settlement
17 agreement, a term—

18 (i) that provides a remedy for a fail-
19 ure by the agency to comply with the
20 terms of the covered settlement agreement
21 other than the revival of the civil action re-
22 solved by the covered settlement agree-
23 ment; and

24 (ii) that—

1 (I) interferes with the authority
2 of an agency to revise, amend, or
3 issue rules under the procedures set
4 forth in chapter 5 of title 5, United
5 States Code, or any other statute or
6 Executive order prescribing rule-
7 making procedures for a rulemaking
8 that is the subject of the covered set-
9 tlement agreement;

10 (II) commits the agency to ex-
11 pend funds that have not been appro-
12 priated and that have not been budg-
13 eted for the regulatory action in ques-
14 tion; or

15 (III) for such a covered settle-
16 ment agreement that commits the
17 agency to exercise in a particular way
18 discretion which was committed to the
19 agency by statute or the Constitution
20 of the United States to respond to
21 changing circumstances, to make pol-
22 icy or managerial choices, or to pro-
23 tect the rights of third parties.

24 (f) REVIEW BY COURT.—

1 (1) AMICUS.—A court considering a proposed
2 covered consent decree or settlement agreement shall
3 presume, subject to rebuttal, that it is proper to
4 allow amicus participation relating to the covered
5 consent decree or settlement agreement by any per-
6 son who filed public comments or participated in a
7 public hearing on the covered consent decree or set-
8 tlement agreement under paragraph (2) or (3) of
9 subsection (d).

10 (2) REVIEW OF DEADLINES.—

11 (A) PROPOSED COVERED CONSENT DE-
12 CREES.—For a proposed covered consent de-
13 cree, a court shall not approve the covered con-
14 sent decree unless the proposed covered consent
15 decree allows sufficient time and incorporates
16 adequate procedures for the agency to comply
17 with chapter 5 of title 5, United States Code,
18 and other applicable statutes that govern rule-
19 making and, unless contrary to the public inter-
20 est, the provisions of any Executive order that
21 governs rulemaking.

22 (B) PROPOSED COVERED SETTLEMENT
23 AGREEMENTS.—For a proposed covered settle-
24 ment agreement, a court shall ensure that the
25 covered settlement agreement allows sufficient

1 time and incorporates adequate procedures for
2 the agency to comply with chapter 5 of title 5,
3 United States Code, and other applicable stat-
4 utes that govern rulemaking and, unless con-
5 trary to the public interest, the provisions of
6 any Executive order that governs rulemaking.

7 (g) ANNUAL REPORTS.—Each agency shall submit to
8 Congress an annual report that, for the year covered by
9 the report, includes—

10 (1) the number, identity, and content of covered
11 civil actions brought against and covered consent de-
12 crees or settlement agreements entered against or
13 into by the agency; and

14 (2) a description of the statutory basis for—

15 (A) each covered consent decree or settle-
16 ment agreement entered against or into by the
17 agency; and

18 (B) any award of attorneys fees or costs in
19 a civil action resolved by a covered consent de-
20 cree or settlement agreement entered against or
21 into by the agency.

22 **SEC. 404. MOTIONS TO MODIFY CONSENT DECREES.**

23 If an agency moves a court to modify a covered con-
24 sent decree or settlement agreement and the basis of the
25 motion is that the terms of the covered consent decree or

1 settlement agreement are no longer fully in the public in-
2 terest due to the obligations of the agency to fulfill other
3 duties or due to changed facts and circumstances, the
4 court shall review the motion and the covered consent de-
5 cree or settlement agreement de novo.

6 **SEC. 405. EFFECTIVE DATE.**

7 This title shall apply to—

8 (1) any covered civil action filed on or after the
9 date of enactment of this title; and

10 (2) any covered consent decree or settlement
11 agreement proposed to a court on or after the date
12 of enactment of this title.

Passed the House of Representatives February 27,
2014.

Attest:

KAREN L. HAAS,
Clerk.