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1ST SESSION

# H. R. 185

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IN THE SENATE OF THE UNITED STATES

JANUARY 16, 2015

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

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## AN ACT

To reform the process by which Federal agencies analyze  
and formulate new regulations and guidance documents.

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.**

2 This Act may be cited as the “Regulatory Account-  
3 ability Act of 2015”.

4 **SEC. 2. DEFINITIONS.**

5 Section 551 of title 5, United States Code, is amend-  
6 ed—

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

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

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

12 “(15) ‘major rule’ means any rule that the Ad-  
13 ministrator of the Office of Information and Regu-  
14 latory Affairs determines is likely to impose—

15 “(A) an annual cost on the economy of  
16 \$100,000,000 or more, adjusted annually for  
17 inflation;

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

22 “(C) significant adverse effects on competi-  
23 tion, employment, investment, productivity, in-  
24 novation, or on the ability of United States-  
25 based enterprises to compete with foreign-based  
26 enterprises in domestic and export markets; or

1           “(D) significant impacts on multiple sec-  
2           tors of the economy;

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

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

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

19          “(B) in one or more sectors of the econ-  
20          omy that has a 6-digit code under the North  
21          American Industry Classification System, re-  
22          duce average weekly wages for employment not  
23          related to new regulatory compliance by 1 per-  
24          cent or more annually during the 1-year, 5-  
25          year, or 10-year period after implementation;

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

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

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

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

1           “(A) an annual cost on the economy of  
2           \$100,000,000 or more, adjusted annually for  
3           inflation;

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

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

13          “(D) significant impacts on multiple sec-  
14          tors of the economy;

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

21          “(21) the ‘Office of Information and Regulatory  
22          Affairs’ means the office established under section  
23          3503 of chapter 35 of title 44 and any successor to  
24          that office.”.

1 **SEC. 3. RULE MAKING.**

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

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

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

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

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

20 “(3) The specific nature and significance of the  
21 problem the agency may address with a rule (includ-  
22 ing the degree and nature of risks the problem poses  
23 and the priority of addressing those risks compared  
24 to other matters or activities within the agency’s ju-  
25 risdiction), whether the problem warrants new agen-

1 cy action, and the countervailing risks that may be  
2 posed by alternatives for new agency action.

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

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

13 “(A) the alternative of no Federal re-  
14 sponse;

15 “(B) amending or rescinding existing  
16 rules;

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

20 “(D) potential responses that—

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

24 “(ii) establish economic incentives to  
25 encourage desired behavior;

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

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

6 “(6) Notwithstanding any other provision of  
7 law—

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

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

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

23 “(c) ADVANCE NOTICE OF PROPOSED RULE MAKING  
24 FOR MAJOR RULES, HIGH-IMPACT RULES, NEGATIVE-IM-  
25 PACT ON JOBS AND WAGES RULES, AND RULES INVOLV-



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

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

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

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

22                   “(C) preliminary information available to  
23                   the agency concerning the other considerations  
24                   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. 4. AGENCY GUIDANCE; PROCEDURES TO ISSUE MAJOR**  
 9 **GUIDANCE; PRESIDENTIAL AUTHORITY TO**  
 10 **ISSUE GUIDELINES FOR ISSUANCE OF GUID-**  
 11 **ANCE.**

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. 5. 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. 6. 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. 7. 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. 8. 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. 9. EFFECTIVE DATE.**

19 The amendments made by this Act 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 Act.

Passed the House of Representatives January 13,  
2015.

Attest:

KAREN L. HAAS,  
*Clerk.*