

115TH CONGRESS
1ST SESSION

H. R. 45

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

IN THE HOUSE OF REPRESENTATIVES

JANUARY 3, 2017

Mr. GOODLATTE (for himself, Mr. PETERSON, Mr. SMITH of Texas, Mr.
MARINO, Mr. SESSIONS, and Mr. FRANKS of Arizona) introduced the fol-
lowing bill; which was referred to the Committee on the Judiciary

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Account-
5 ability Act of 2017”.

6 **SEC. 2. DEFINITIONS.**

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

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

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

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

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

7 “(A) an annual cost on the economy of
8 \$100,000,000 or more, adjusted annually for
9 inflation;

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

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

19 “(D) significant impacts on multiple sec-
20 tors of the economy;

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

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

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

12 “(B) in one or more sectors of the econ-
13 omy that has a 6-digit code under the North
14 American Industry Classification System, re-
15 duce average weekly wages for employment not
16 related to new regulatory compliance by 1 per-
17 cent or more annually during the 1-year, 5-
18 year, or 10-year period after implementation;

19 “(C) in any industry area (as such term is
20 defined in the Current Population Survey con-
21 ducted by the Bureau of Labor Statistics) in
22 which the most recent annual unemployment
23 rate for the industry area is greater than 5 per-
24 cent, as determined by the Bureau of Labor
25 Statistics in the Current Population Survey, re-

1 duce employment not related to new regulatory
2 compliance during the first year after imple-
3 mentation; or

4 “(D) in any industry area in which the Bu-
5 reau of Labor Statistics projects in the Occupa-
6 tional Employment Statistics program that the
7 employment level will decrease by 1 percent or
8 more, further reduce employment not related to
9 new regulatory compliance during the first year
10 after implementation;

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

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

19 “(A) an annual cost on the economy of
20 \$100,000,000 or more, adjusted annually for
21 inflation;

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

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

6 “(D) significant impacts on multiple sec-
7 tors of the economy;

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

14 “(21) the ‘Office of Information and Regulatory
15 Affairs’ means the office established under section
16 3503 of chapter 35 of title 44 and any successor to
17 that office.”.

18 **SEC. 3. RULE MAKING.**

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

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

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

5 “(1) The legal authority under which a rule
6 may be proposed, including whether a rule making
7 is required by statute, and if so, whether by a spe-
8 cific date, or whether the agency has discretion to
9 commence a rule making.

10 “(2) Other statutory considerations applicable
11 to whether the agency can or should propose a rule
12 or undertake other agency action.

13 “(3) The specific nature and significance of the
14 problem the agency may address with a rule (includ-
15 ing the degree and nature of risks the problem poses
16 and the priority of addressing those risks compared
17 to other matters or activities within the agency’s ju-
18 risdiction), whether the problem warrants new agen-
19 cy action, and the countervailing risks that may be
20 posed by alternatives for new agency action.

21 “(4) Whether existing rules have created or
22 contributed to the problem the agency may address
23 with a rule and whether those rules could be amend-
24 ed or rescinded to address the problem in whole or
25 part.

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

6 “(A) the alternative of no Federal re-
7 sponse;

8 “(B) amending or rescinding existing
9 rules;

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

13 “(D) potential responses that—

14 “(i) specify performance objectives
15 rather than conduct or manners of compli-
16 ance;

17 “(ii) establish economic incentives to
18 encourage desired behavior;

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

21 “(iv) incorporate other innovative al-
22 ternatives rather than agency actions that
23 specify conduct or manners of compliance.

24 “(6) Notwithstanding any other provision of
25 law—

“(A) the potential costs and benefits associated with potential alternative rules and other responses considered under section 553(b)(5), including direct, indirect, and cumulative costs and benefits and estimated impacts on jobs (including an estimate of the net gain or loss in domestic jobs), wages, economic growth, innovation, economic competitiveness, and impacts on low income populations;

“(B) means to increase the cost-effectiveness of any Federal response; and

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

“(c) ADVANCE NOTICE OF PROPOSED RULE MAKING FOR MAJOR RULES, HIGH-IMPACT RULES, NEGATIVE-IMPACT ON JOBS AND WAGES RULES, AND RULES INVOLVING NOVEL LEGAL OR POLICY ISSUES.—In the case of a rule making for a major rule, a high-impact rule, a negative-impact on jobs and wages rule, or a rule that involves a novel legal or policy issue arising out of statutory mandates, not later than 90 days before a notice of proposed rule making is published in the Federal Register, an agency shall publish advance notice of proposed rule making

1 in the Federal Register. In publishing such advance notice,
2 the agency shall—

3 “(1) include a written statement identifying, at
4 a minimum—

5 “(A) the nature and significance of the
6 problem the agency may address with a rule, in-
7 cluding data and other evidence and informa-
8 tion on which the agency expects to rely for the
9 proposed rule;

10 “(B) the legal authority under which a rule
11 may be proposed, including whether a rule mak-
12 ing is required by statute, and if so, whether by
13 a specific date, or whether the agency has dis-
14 cretion to commence a rule making;

15 “(C) preliminary information available to
16 the agency concerning the other considerations
17 specified in subsection (b);

18 “(D) in the case of a rule that involves a
19 novel legal or policy issue arising out of statu-
20 tory mandates, the nature of and potential rea-
21 sons to adopt the novel legal or policy position
22 upon which the agency may base a proposed
23 rule; and

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

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

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

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

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

20 “(B) reference to the legal authority under
21 which the rule is proposed;

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

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

1 “(i) a summary of information known to
2 the agency concerning the considerations speci-
3 fied in subsection (b);

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

7 “(iii) a summary of any preliminary risk
8 assessment or regulatory impact analysis per-
9 formed by the agency; and

10 “(iv) information specifically identifying all
11 data, studies, models, and other evidence or in-
12 formation considered or used by the agency in
13 connection with its determination to propose
14 the rule;

15 “(E)(i) a reasoned preliminary determination of
16 need for the rule based on the information described
17 under subparagraph (D);

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

20 “(iii) an achievable objective for the rule and
21 metrics by which the agency will measure progress
22 toward that objective;

23 “(F) a reasoned preliminary determination that
24 the benefits of the proposed rule meet the relevant
25 statutory objectives and justify the costs of the pro-

1 posed rule (including all costs to be considered under
2 subsection (b)(6)), based on the information de-
3 scribed under subparagraph (D);

4 “(G) a discussion of—

5 “(i) the alternatives to the proposed rule,
6 and other alternative responses, considered by
7 the agency under subsection (b);

8 “(ii) the costs and benefits of those alter-
9 natives (including all costs to be considered
10 under subsection (b)(6));

11 “(iii) whether those alternatives meet rel-
12 evant statutory objectives; and

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

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

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

20 All information provided to or considered by the agency,
21 and steps to obtain information by the agency, in connec-
22 tion with its determination to propose the rule, including
23 any preliminary risk assessment or regulatory impact
24 analysis prepared by the agency and all other information
25 prepared or described by the agency under subparagraph

1 (D) and, at the discretion of the President or the Adminis-
2 trator of the Office of Information and Regulatory Affairs,
3 information provided by that Office in consultations with
4 the agency, shall be placed in the docket for the proposed
5 rule and made accessible to the public by electronic means
6 and otherwise for the public's use when the notice of pro-
7 posed rule making is published.

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

17 “(B) If in its determination of other agency course
18 the agency makes a determination to amend or rescind
19 an existing rule, the agency need not undertake additional
20 proceedings under subsection (c) before it publishes a no-
21 tice of proposed rule making to amend or rescind the exist-
22 ing rule.

23 All information provided to or considered by the agency,
24 and steps to obtain information by the agency, in connec-
25 tion with its determination of other agency course, includ-

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

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

18 “(A) if a hearing is required under paragraph
19 (4)(B) or subsection (e), opportunity for oral presen-
20 tation shall be provided pursuant to that require-
21 ment; or

22 “(B) when other than under subsection (e) of
23 this section rules are required by statute or at the
24 discretion of the agency to be made on the record
25 after opportunity for an agency hearing, sections

1 556 and 557 shall apply, and paragraph (4), the re-
2 quirements of subsection (e) to receive comment out-
3 side of the procedures of sections 556 and 557, and
4 the petition procedures of subsection (e)(6) shall not
5 apply.

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

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

16 “(B)(i) The agency may, upon review of the petition,
17 determine without further process to exclude from the rule
18 making the evidence or other information that is the sub-
19 ject of the petition and, if appropriate, withdraw the pro-
20 posed rule. The agency shall promptly publish any such
21 determination.

22 “(ii) If the agency does not resolve the petition under
23 the procedures of clause (i), it shall grant any such peti-
24 tion that presents a prima facie case that evidence or other
25 information upon which the agency bases the proposed

1 rule fails to comply with the Information Quality Act, hold
2 the requested hearing not later than 30 days after receipt
3 of the petition, provide a reasonable opportunity for cross-
4 examination at the hearing, and decide the issues pre-
5 sented by the petition not later than 60 days after receipt
6 of the petition. The agency may deny any petition that
7 it determines does not present such a prima facie case.

8 “(C) There shall be no judicial review of the agency’s
9 disposition of issues considered and decided or determined
10 under subparagraph (B)(ii) until judicial review of the
11 agency’s final action. There shall be no judicial review of
12 an agency’s determination to withdraw a proposed rule
13 under subparagraph (B)(i) on the basis of the petition.

14 “(D) Failure to petition for a hearing under this
15 paragraph shall not preclude judicial review of any claim
16 based on the Information Quality Act under chapter 7 of
17 this title.

18 “(e) HEARINGS FOR HIGH-IMPACT RULES.—Fol-
19 lowing notice of a proposed rule making, receipt of com-
20 ments on the proposed rule, and any hearing held under
21 subsection (d)(4), and before adoption of any high-impact
22 rule, the agency shall hold a hearing in accordance with
23 sections 556 and 557, unless such hearing is waived by
24 all participants in the rule making other than the agency.
25 The agency shall provide a reasonable opportunity for

1 cross-examination at such hearing. The hearing shall be
2 limited to the following issues of fact, except that partici-
3 pants at the hearing other than the agency may waive de-
4 termination of any such issue:

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

7 “(2) Whether there is an alternative to the pro-
8 posed rule that would achieve the relevant statutory
9 objectives at a lower cost (including all costs to be
10 considered under subsection (b)(6)) than the pro-
11 posed rule.

12 “(3) If there is more than one alternative to the
13 proposed rule that would achieve the relevant statu-
14 tory objectives at a lower cost than the proposed
15 rule, which alternative would achieve the relevant
16 statutory objectives at the lowest cost.

17 “(4) Whether, if the agency proposes to adopt
18 a rule that is more costly than the least costly alter-
19 native that would achieve the relevant statutory ob-
20 jectives (including all costs to be considered under
21 subsection (b)(6)), the additional benefits of the
22 more costly rule exceed the additional costs of the
23 more costly rule.

24 “(5) Whether the evidence and other informa-
25 tion upon which the agency bases the proposed rule

1 meets the requirements of the Information Quality
2 Act.

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

13 No later than 45 days before any hearing held under this
14 subsection or sections 556 and 557, the agency shall pub-
15 lish in the Federal Register a notice specifying the pro-
16 posed rule to be considered at such hearing, the issues
17 to be considered at the hearing, and the time and place
18 for such hearing, except that such notice may be issued
19 not later than 15 days before a hearing held under sub-
20 section (d)(4)(B).

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

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

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

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

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

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

22 “(B) the agency’s reasoned final determination
23 of need for a rule to address the problem the agency
24 seeks to address with the rule, including a statement
25 of whether a rule is required by statute and a sum-

1 mary of any final risk assessment or regulatory im-
2 pact analysis prepared by the agency;

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

7 “(D) the agency’s reasoned final determination
8 not to adopt any of the alternatives to the proposed
9 rule considered by the agency during the rule mak-
10 ing, including—

11 “(i) the agency’s reasoned final determina-
12 tion that no alternative considered achieved the
13 relevant statutory objectives with lower costs
14 (including all costs to be considered under sub-
15 section (b)(6)) than the rule; or

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

19 “(E) the agency’s reasoned final determina-
20 tion—

21 “(i) that existing rules have not created or
22 contributed to the problem the agency seeks to
23 address with the rule; or

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

4 “(I) why amendment or rescission of
5 such existing rules is not alone sufficient
6 to respond to the problem; and

7 “(II) whether and how the agency in-
8 tends to amend or rescind the existing rule
9 separate from adoption of the rule;

10 “(F) the agency’s reasoned final determination
11 that the evidence and other information upon which
12 the agency bases the rule complies with the Informa-
13 tion Quality Act;

14 “(G) the agency’s reasoned final determination
15 that the rule meets the objectives that the agency
16 identified in subsection (d)(1)(E)(iii) or that other
17 objectives are more appropriate in light of the full
18 administrative record and the rule meets those ob-
19 jectives;

20 “(H) the agency’s reasoned final determination
21 that it did not deviate from the metrics the agency
22 included in subsection (d)(1)(E)(iii) or that other
23 metrics are more appropriate in light of the full ad-
24 ministrative record and the agency did not deviate
25 from those metrics;

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

11 “(ii) review of a rule under a plan required by
12 clause (i) of this subparagraph shall take into ac-
13 count the factors and criteria set forth in sub-
14 sections (b) through (f) of section 553 of this title;
15 and

16 “(J) for any negative-impact on jobs and wages
17 rule, a statement that the head of the agency that
18 made the rule approved the rule knowing about the
19 findings and determination of the agency or the Ad-
20 ministrator of the Office of Information and Regu-
21 latory Affairs that qualified the rule as a negative
22 impact on jobs and wages rule.

23 All information considered by the agency in connection
24 with its adoption of the rule, and, at the discretion of the
25 President or the Administrator of the Office of Informa-

tion and Regulatory Affairs, information provided by that Office in consultations with the agency, shall be placed in the docket for the rule and made accessible to the public for the public's use no later than when the rule is adopted.

“(g) EXCEPTIONS FROM NOTICE AND HEARING REQUIREMENTS.—(1) Except when notice or hearing is required by statute, the following do not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice:

“(A) Subsections (c) through (e).

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

“(C) Subparagraphs (B) through (H) of subsection (f)(4).

“(2)(A) When the agency for good cause, based upon evidence, finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that compliance with subsection (c), (d), or (e) or requirements to render final determinations under subsection (f) of this section before the issuance of an interim rule is impracticable or contrary to the public interest, including interests of national security, such subsections or requirements to render final determinations shall not apply to the agency's adoption of an interim rule.

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

17 “(C) Other than in cases involving interests of na-
18 tional security, upon the agency’s publication of an interim
19 rule without compliance with subsection (c), (d), or (e) or
20 requirements to render final determinations under sub-
21 section (f) of this section, an interested party may seek
22 immediate judicial review under chapter 7 of this title of
23 the agency’s determination to adopt such interim rule. The
24 record on such review shall include all documents and in-
25 formation considered by the agency and any additional in-

1 formation presented by a party that the court determines
2 necessary to consider to assure justice.

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

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

23 “(i) DATE OF PUBLICATION OF RULE.—The required
24 publication or service of a substantive final or interim rule

1 shall be made not less than 30 days before the effective
2 date of the rule, except—

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

5 “(2) interpretive rules and statements of policy;
6 or

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

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

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

22 “(B) To ensure that agencies use the best available
23 techniques to quantify and evaluate anticipated present
24 and future benefits, costs, other economic issues, and risks
25 as accurately as possible, the Administrator of the Office

1 of Information and Regulatory Affairs shall regularly up-
2 date guidelines established under paragraph (1)(A) of this
3 subsection.

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

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

18 “(A) issue guidelines and otherwise take action
19 to ensure that rule makings conducted in whole or
20 in part under procedures specified in provisions of
21 law other than those of subchapter II of this title
22 conform to the fullest extent allowed by law with the
23 procedures set forth in section 553 of this title; and

24 “(B) issue guidelines for the conduct of hear-
25 ings under subsections 553(d)(4) and 553(e) of this

1 section, including to assure a reasonable opportunity
2 for cross-examination. Each agency shall adopt regu-
3 lations for the conduct of hearings consistent with
4 the guidelines issued under this subparagraph.

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

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

21 “(m) MONETARY POLICY EXEMPTION.—Nothing in
22 subsection (b)(6), subparagraphs (F) and (G) of sub-
23 section (d)(1), subsection (e), subsection (f)(3), and sub-
24 paragraphs (C) and (D) of subsection (f)(5) shall apply
25 to rule makings that concern monetary policy proposed or

1 implemented by the Board of Governors of the Federal
 2 Reserve System or the Federal Open Market Committee.”.

3 **SEC. 4. AGENCY GUIDANCE; PROCEDURES TO ISSUE MAJOR**
 4 **GUIDANCE; PRESIDENTIAL AUTHORITY TO**
 5 **ISSUE GUIDELINES FOR ISSUANCE OF GUID-**
 6 **ANCE.**

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

10 **“§ 553a. Agency guidance; procedures to issue major**
 11 **guidance; authority to issue guidelines**
 12 **for issuance of guidance**

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

16 “(1) make and document a reasoned determina-
 17 tion that—

18 “(A) assures that such guidance is under-
 19 standable and complies with relevant statutory
 20 objectives and regulatory provisions (including
 21 any statutory deadlines for agency action);

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

24 “(C) identifies the costs and benefits (in-
 25 cluding all costs to be considered during a rule

1 making under section 553(b) of this title) of
2 conduct conforming to such guidance and
3 assures that such benefits justify such costs;
4 and

5 “(D) describes alternatives to such guid-
6 ance and their costs and benefits (including all
7 costs to be considered during a rule making
8 under section 553(b) of this title) and explains
9 why the agency rejected those alternatives; and
10 “(2) confer with the Administrator of the Office
11 of Information and Regulatory Affairs on the
12 issuance of such guidance to assure that the guid-
13 ance is reasonable, understandable, consistent with
14 relevant statutory and regulatory provisions and re-
15 quirements or practices of other agencies, does not
16 produce costs that are unjustified by the guidance’s
17 benefits, and is otherwise appropriate.

18 Upon issuing major guidance, or guidance that involves
19 a novel legal or policy issue arising out of statutory man-
20 dates, the agency shall publish the documentation required
21 by subparagraph (1) by electronic means and otherwise.

22 “(b) Agency guidance—

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

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

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

7 Agencies shall avoid the issuance of guidance that is in-
8 consistent or incompatible with, or duplicative of, the
9 agency’s governing statutes or regulations, with the goal
10 of minimizing the potential for uncertainty and litigation
11 arising from such uncertainty.

12 “(c) The Administrator of the Office of Information
13 and Regulatory Affairs shall have authority to issue guide-
14 lines for use by the agencies in the issuance of major guid-
15 ance and other guidance. Such guidelines shall assure that
16 each agency avoids issuing guidance documents that are
17 inconsistent or incompatible with, or duplicative of, the
18 law, its other regulations, or the regulations of other Fed-
19 eral agencies and drafts its guidance documents to be sim-
20 ple and easy to understand, with the goal of minimizing
21 the potential for uncertainty and litigation arising from
22 such uncertainty.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 5 of title 5, United States Code, is amended

1 by inserting after the item relating to section 553 the fol-
 2 lowing new item:

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

3 **SEC. 5. HEARINGS; PRESIDING EMPLOYEES; POWERS AND**
 4 **DUTIES; BURDEN OF PROOF; EVIDENCE;**
 5 **RECORD AS BASIS OF DECISION.**

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

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

17 “(2) Notwithstanding paragraph (1) of this sub-
 18 section, in a proceeding held under this section pursuant
 19 to section 553(d)(4) or 553(e), the record for decision
 20 shall also include any information that is part of the
 21 record of proceedings under section 553.

22 “(f) When an agency conducts rule making under this
 23 section and section 557 directly after concluding pro-
 24 ceedings upon an advance notice of proposed rule making

1 under section 553(c), the matters to be considered and
2 determinations to be made shall include, among other rel-
3 evant matters and determinations, the matters and deter-
4 minations described in subsections (b) and (f) of section
5 553.

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

20 **SEC. 6. ACTIONS REVIEWABLE.**

21 Section 704 of title 5, United States Code, is amend-
22 ed—

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

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

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

21 **SEC. 7. SCOPE OF REVIEW.**

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

24 (1) by striking “To the extent necessary” and
25 inserting “(a) To the extent necessary”;

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

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

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

7 “(1) interpretation of an agency rule if the
8 agency did not comply with the procedures of section
9 553 or sections 556–557 of chapter 5 of this title to
10 issue the interpretation;

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

17 “(3) determinations made in the adoption of an
18 interim rule; or

19 “(4) guidance.

20 “(c) The court shall review agency denials of petitions
21 under section 553(e)(6) or any other petition for a hearing
22 under sections 556 and 557 for abuse of agency discre-
23 tion.”.

1 **SEC. 8. ADDED DEFINITION.**

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

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

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

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

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

16 **SEC. 9. EFFECTIVE DATE.**

17 The amendments made by this Act to—

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

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

21 (3) paragraphs (2) and (3) of section 706(b) of
22 such title; and

23 (4) subsection (c) of section 706 of such title,
24 shall not apply to any rule makings pending or completed
25 on the date of enactment of this Act.

