

RULES COMMITTEE PRINT 113-38
TEXT OF H.R. 2804, ALL ECONOMIC
REGULATIONS ARE TRANSPARENT ACT OF 2014

[Showing the texts of H.R. 2804, as ordered reported by the Committee on Oversight and Government Reform; H.R. 2122 and H.R. 1493, as reported by the Committee on the Judiciary; and H.R. 2542 as reported by the Committee on the Judiciary and the Committee on Small Business.]

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

Sec. 1. Short title; table of contents.

TITLE I—ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT

Sec. 101. Short title.

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

TITLE II—REGULATORY ACCOUNTABILITY ACT

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Rule making.

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

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

Sec. 206. Actions reviewable.

Sec. 207. Scope of review.

Sec. 208. Added definition.

Sec. 209. Effective date.

TITLE III—REGULATORY FLEXIBILITY IMPROVEMENTS ACT

- Sec. 301. Short title; table of contents.
Sec. 302. Clarification and expansion of rules covered by the Regulatory Flexibility Act.
Sec. 303. Expansion of report of regulatory agenda.
Sec. 304. Requirements providing for more detailed analyses.
Sec. 305. Repeal of waiver and delay authority; additional powers of the Chief Counsel for Advocacy.
Sec. 306. Procedures for gathering comments.
Sec. 307. Periodic review of rules.
Sec. 308. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.
Sec. 309. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.
Sec. 310. Establishment and approval of small business concern size standards by Chief Counsel for Advocacy.
Sec. 311. Clerical amendments.
Sec. 312. Agency preparation of guides.
Sec. 313. Comptroller General report.

TITLE IV—SUNSHINE FOR REGULATORY DECREES AND SETTLEMENTS ACT

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

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

4 **SEC. 101. SHORT TITLE.**

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

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

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

1 **“CHAPTER 6A—OFFICE OF INFORMATION**
2 **AND REGULATORY AFFAIRS PUBLICA-**
3 **TION OF INFORMATION RELATING TO**
4 **RULES**

“Sec.

“651. Agency monthly submission to Office of Information and Regulatory Affairs.

“652. Office of Information and Regulatory Affairs Publications.

“653. Requirement for rules to appear in agency-specific monthly publication.

“654. Definitions.

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

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

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

14 “(A) A summary of the nature of the rule,
15 including the regulation identifier number and
16 the docket number for the rule.

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

19 “(i) any statutory or judicial deadline;
20 and

21 “(ii) whether the legal basis restricts
22 or precludes the agency from conducting

1 an analysis of the costs or benefits of the
2 rule during the rule making, and if not,
3 whether the agency plans to conduct an
4 analysis of the costs or benefits of the rule
5 during the rule making.

6 “(C) Whether the agency plans to claim an
7 exemption from the requirements of section 553
8 pursuant to section 553(b)(B).

9 “(D) The stage of the rule making as of
10 the date of submission.

11 “(E) Whether the rule is subject to review
12 under section 610.

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

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

18 “(B) an estimate of whether the rule will
19 cost—

20 “(i) less than \$50,000,000;

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

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

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

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

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

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

8 “(C) any estimate of the economic effects
9 of the rule, including any estimate of the net ef-
10 fect that the rule will have on the number of
11 jobs in the United States, that was considered
12 in drafting the rule. If such estimate is not
13 available, a statement affirming that no infor-
14 mation on the economic effects, including the
15 effect on the number of jobs, of the rule has
16 been considered.

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

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

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

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

5 “(A) The information that the Adminis-
6 trator received from the head of each agency
7 under section 651.

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

10 “(i) that was proposed by each agen-
11 cy, including, for each such rule, an indica-
12 tion of whether the issuing agency con-
13 ducted an analysis of the costs or benefits
14 of the rule; and

15 “(ii) that was finalized by each agen-
16 cy, including for each such rule an indica-
17 tion of whether—

18 “(I) the issuing agency conducted
19 an analysis of the costs or benefits of
20 the rule;

21 “(II) the agency claimed an ex-
22 emption from the procedures under
23 section 553 pursuant to section
24 553(b)(B); and

1 “(III) the rule was issued pursu-
2 ant to a statutory mandate or the rule
3 making is committed to agency discre-
4 tion by law.

5 “(C) The number of agency actions and a
6 list of each such action taken by each agency
7 that—

8 “(i) repealed a rule;

9 “(ii) reduced the scope of a rule;

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

11 “(iv) accelerated the expiration date
12 of a rule.

13 “(D) The total cost (without reducing the
14 cost by any offsetting benefits) of all rules pro-
15 posed or finalized, and the number of rules for
16 which an estimate of the cost of the rule was
17 not available.

18 “(2) PUBLICATION ON THE INTERNET.—Not
19 later than October 1 of each year, the Administrator
20 shall make publicly available on the Internet the fol-
21 lowing:

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

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

4 “(C) The number of rules and a list of
5 each such rule reviewed by the Director of the
6 Office of Management and Budget for the pre-
7 vious year, and the authority under which each
8 such review was conducted.

9 “(D) The number of rules and a list of
10 each such rule for which the head of an agency
11 completed a review under section 610 for the
12 previous year.

13 “(E) The number of rules and a list of
14 each such rule submitted to the Comptroller
15 General under section 801.

16 “(F) The number of rules and a list of
17 each such rule for which a resolution of dis-
18 approval was introduced in either the House of
19 Representatives or the Senate under section
20 802.

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

23 “(a) IN GENERAL.—Subject to subsection (b), a rule
24 may not take effect until the information required to be
25 made publicly available on the Internet regarding such

1 rule pursuant to section 652(a) has been so available for
2 not less than 6 months.

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

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

7 “(2) which the President determines by Execu-
8 tive Order should take effect because the rule is—

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

11 “(B) necessary for the enforcement of
12 criminal laws;

13 “(C) necessary for national security; or

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

16 “§ 654. Definitions

17 “In this chapter, the terms ‘agency’, ‘agency action’,
18 ‘rule’, and ‘rule making’ have the meanings given those
19 terms in section 551.”.

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

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

24 (c) EFFECTIVE DATES.—

1 (1) AGENCY MONTHLY SUBMISSION TO THE OF-
2 FICE OF INFORMATION AND REGULATORY AF-
3 FAIRS.—The first submission required pursuant to
4 section 651 of title 5, United States Code, as added
5 by subsection (a), shall be submitted not later than
6 30 days after the date of the enactment of this title,
7 and monthly thereafter.

8 (2) CUMULATIVE ASSESSMENT OF AGENCY
9 RULE MAKING.—

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

15 (B) DEADLINE.—The first requirement to
16 publish or make available, as the case may be,
17 under subsection (b) of section 652 of title 5,
18 United States Code, as added by subsection (a),
19 shall be the first October 1 after the effective
20 date of such subsection.

21 (C) FIRST PUBLICATION.—The require-
22 ment under section 652(b)(2)(A) of title 5,
23 United States Code, as added by subsection (a),
24 shall include for the first publication, any anal-
25 ysis of the costs or benefits conducted for a

1 proposed or final rule, for the 10 years before
2 the date of the enactment of this title.

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

8 **TITLE II—REGULATORY**
9 **ACCOUNTABILITY ACT**

10 **SEC. 201. SHORT TITLE.**

11 This title may be cited as the “Regulatory Account-
12 ability Act of 2014”.

13 **SEC. 202. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 “(D) potential responses that—

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

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

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

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

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

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

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

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

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

1 INVOLVING NOVEL LEGAL OR POLICY ISSUES.—In the
2 case of a rule making for a major rule or high-impact rule
3 or a rule that involves a novel legal or policy issue arising
4 out of statutory mandates, not later than 90 days before
5 a notice of proposed rule making is published in the Fed-
6 eral Register, an agency shall publish advance notice of
7 proposed rule making in the Federal Register. In pub-
8 lishing such advance notice, the agency shall—

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

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

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

21 “(C) preliminary information available to
22 the agency concerning the other considerations
23 specified in subsection (b); and

24 “(D) in the case of a rule that involves a
25 novel legal or policy issue arising out of statu-

1 tory mandates, the nature of and potential rea-
2 sons to adopt the novel legal or policy position
3 upon which the agency may base a proposed
4 rule;

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

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

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

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

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

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

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

4 “(i) a summary of information known to
5 the agency concerning the considerations speci-
6 fied in subsection (b);

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

10 “(iii) a summary of any preliminary risk
11 assessment or regulatory impact analysis per-
12 formed by the agency; and

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

18 “(E)(i) a reasoned preliminary determination of
19 need for the rule based on the information described
20 under subparagraph (D); and

21 “(ii) an additional statement of whether a rule
22 is required by statute;

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; and

14 “(G)(i) for any major rule or high-impact rule,
15 the agency’s plan for review of the rule no less than
16 every ten years to determine whether, based upon
17 evidence, there remains a need for the rule, whether
18 the rule is in fact achieving statutory objectives,
19 whether the rule’s benefits continue to justify its
20 costs, and whether the rule can be modified or re-
21 scinded to reduce costs while continuing to achieve
22 statutory objectives; and

23 “(ii) review of a rule under a plan required by
24 clause (i) of this subparagraph shall take into ac-

1 count the factors and criteria set forth in sub-
2 sections (b) through (f) of section 553 of this title.
3 All information considered by the agency in connection
4 with its adoption of the rule, and, at the discretion of the
5 President or the Administrator of the Office of Informa-
6 tion and Regulatory Affairs, information provided by that
7 Office in consultations with the agency, shall be placed
8 in the docket for the rule and made accessible to the public
9 for the public's use no later than when the rule is adopted.

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

15 “(A) Subsections (c) through (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(b) Agency guidance—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(4) guidance.

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

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

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

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

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

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

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

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

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

19 The amendments made by this title to—

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

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

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

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

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

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

5 **SEC. 301. SHORT TITLE; TABLE OF CONTENTS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(10) LAND MANAGEMENT PLAN.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 “(4) SMALL ORGANIZATION.—

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

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

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

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

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

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

17 **SEC. 303. EXPANSION OF REPORT OF REGULATORY AGEN-**
18 **DA.**

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

21 (1) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

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

7 (A) in paragraph (4), by striking “an ex-
8 planation” and inserting “a detailed ex-
9 planation”;

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

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

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

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

23 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—

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

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

9 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
10 Subsection (a) of section 605 of title 5, United States
11 Code, is amended to read as follows:

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

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

- 21 (1) by inserting “detailed” before “statement”
22 the first place it appears; and
23 (2) by inserting “and legal” after “factual”.

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

4 **“§ 607. Quantification requirements**

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

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

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

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

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

18 **“§ 608. Additional powers of Chief Counsel for Advoca-**
19 **cacy**

20 “(a)(1) Not later than 270 days after the date of the
21 enactment of this section, the Chief Counsel for Advocacy
22 of the Small Business Administration shall, after oppor-
23 tunity for notice and comment under section 553, issue
24 rules governing agency compliance with this chapter. The
25 Chief Counsel may modify or amend such rules after no-

1 tice and comment under section 553. This chapter (other
2 than this subsection) shall not apply with respect to the
3 issuance, modification, and amendment of rules under this
4 paragraph.

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

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

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

24 (b) CONFORMING AMENDMENTS.—

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

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

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

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

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

10 “(3) A small entity”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(4) The complexity of the rule.

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

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

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

1 “(f) The agency shall publish in the Federal Register
2 and on its website a list of rules to be reviewed pursuant
3 to such plan. The agency shall include in the publication
4 a solicitation of public comments on any further inclusions
5 or exclusions of rules from the list, and shall respond to
6 such comments. Such publication shall include a brief de-
7 scription of the rule, the reason why the agency deter-
8 mined that it has a significant economic impact on a sub-
9 stantial number of small entities (without regard to wheth-
10 er it had prepared a final regulatory flexibility analysis
11 for the rule), and request comments from the public, the
12 Chief Counsel for Advocacy of the Small Business Admin-
13 istration, and the Regulatory Enforcement Ombudsman
14 concerning the enforcement of the rule.”.

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

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

22 (b) JURISDICTION.—Paragraph (2) of such section is
23 amended by inserting “(or which would have such jurisdic-
24 tion if publication of the final rule constituted final agency
25 action)” after “provision of law,”.

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

3 (1) by striking “final agency action” and insert-
4 ing “publication of the final rule”; and

5 (2) by inserting “, in the case of a rule for
6 which the date of final agency action is the same
7 date as the publication of the final rule,” after “ex-
8 cept that”.

9 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
10 CACY.—Subsection (b) of section 612 of title 5, United
11 States Code, is amended by inserting before the first pe-
12 riod “or agency compliance with section 601, 603, 604,
13 605(b), 609, or 610”.

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

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

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

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

23 (3) by inserting after paragraph (7) the fol-
24 lowing new paragraph:

1 “(8) all final rules under section 608(a) of title
2 5.”.

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

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

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

9 (3) by adding at the end the following new sub-
10 paragraph:

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

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

19 **SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
20 **NESS CONCERN SIZE STANDARDS BY CHIEF**
21 **COUNSEL FOR ADVOCACY.**

22 (a) IN GENERAL.—Subparagraph (A) of section
23 3(a)(2) of the Small Business Act (15 U.S.C.
24 632(a)(2)(A)) is amended to read as follows:

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

3 “(i) the Administrator may specify de-
4 tailed definitions or standards by which a
5 business concern may be determined to be
6 a small business concern for purposes of
7 this Act or the Small Business Investment
8 Act of 1958; and

9 “(ii) the Chief Counsel for Advocacy
10 may specify such definitions or standards
11 for purposes of any other Act.”.

12 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
13 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
14 632(a)(2)(C)(iii)) is amended to read as follows:

15 “(iii) except in the case of a size
16 standard prescribed by the Administrator,
17 is approved by the Chief Counsel for Advo-
18 cacy.”.

19 (c) INDUSTRY VARIATION.—Paragraph (3) of section
20 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
21 amended—

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

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

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

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

12 **SEC. 311. CLERICAL AMENDMENTS.**

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

15 (1) in paragraph (1)—

16 (A) by striking the semicolon at the end
17 and inserting a period; and

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

20 “(1) AGENCY.—The term”;

21 (2) in paragraph (3)—

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

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

1 “(3) SMALL BUSINESS.—The term”;

2 (3) in paragraph (5)—

3 (A) by striking the semicolon at the end
4 and inserting a period; and

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

7 “(5) SMALL GOVERNMENTAL JURISDICTION.—
8 The term”; and

9 (4) in paragraph (6)—

10 (A) by striking “; and” and inserting a pe-
11 riod; and

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

14 “(6) SMALL ENTITY.—The term”.

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

18 “§ 605. Incorporations by reference and certifi-
19 cations”.

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

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

“605. Incorporations by reference and certifications.”;

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

“607. Quantification requirements.”;

3 and

4 (3) by striking the item relating to section 608
5 and inserting the following:

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

6 (d) OTHER CLERICAL ADENDMENTS TO CHAPTER
7 6.—Chapter 6 of title 5, United States Code, is amended
8 as follows:

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

10 (2) In section 604(a) by striking the second
11 paragraph (6).

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

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

16 “(5) AGENCY PREPARATION OF GUIDES.—The
17 agency shall, in its sole discretion, taking into ac-
18 count the subject matter of the rule and the lan-
19 guage of relevant statutes, ensure that the guide is
20 written using sufficiently plain language likely to be
21 understood by affected small entities. Agencies may
22 prepare separate guides covering groups or classes of
23 similarly affected small entities and may cooperate
24 with associations of small entities to distribute such

1 guides. In developing guides, agencies shall solicit
2 input from affected small entities or associations of
3 affected small entities. An agency may prepare
4 guides and apply this section with respect to a rule
5 or a group of related rules.”.

6 **SEC. 313. COMPTROLLER GENERAL REPORT.**

7 Not later than 90 days after the date of enactment
8 of this title, the Comptroller General of the United States
9 shall complete and publish a study that examines whether
10 the Chief Counsel for Advocacy of the Small Business Ad-
11 ministration has the capacity and resources to carry out
12 the duties of the Chief Counsel under this title and the
13 amendments made by this title.

14 **TITLE IV—SUNSHINE FOR REGU-**
15 **LATORY DECREES AND SET-**
16 **TLEMENTS ACT**

17 **SEC. 401. SHORT TITLE.**

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

20 **SEC. 402. DEFINITIONS.**

21 In this title—

22 (1) the terms “agency” and “agency action”
23 have the meanings given those terms under section
24 551 of title 5, United States Code;

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

3 (A) seeking to compel agency action;

4 (B) alleging that the agency is unlawfully
5 withholding or unreasonably delaying an agency
6 action relating to a regulatory action that would
7 affect the rights of—

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

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

12 (C) brought under—

13 (i) chapter 7 of title 5, United States
14 Code; or

15 (ii) any other statute authorizing such
16 an action;

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

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

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

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

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

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

6 (5) the term “covered settlement agreement”
7 means—

8 (A) a settlement agreement entered into in
9 a covered civil action; and

10 (B) any other settlement agreement that
11 requires agency action relating to a regulatory
12 action that affects the rights of—

13 (i) private persons other than the per-
14 son bringing the action; or

15 (ii) a State, local, or tribal govern-
16 ment.

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

18 (a) PLEADINGS AND PRELIMINARY MATTERS.—

19 (1) IN GENERAL.—In any covered civil action,
20 the agency against which the covered civil action is
21 brought shall publish the notice of intent to sue and
22 the complaint in a readily accessible manner, includ-
23 ing by making the notice of intent to sue and the
24 complaint available online not later than 15 days

1 after receiving service of the notice of intent to sue
2 or complaint, respectively.

3 (2) ENTRY OF A COVERED CONSENT DECREE
4 OR SETTLEMENT AGREEMENT.—A party may not
5 make a motion for entry of a covered consent decree
6 or to dismiss a civil action pursuant to a covered set-
7 tlement agreement until after the end of proceedings
8 in accordance with paragraph (1) and subpara-
9 graphs (A) and (B) of paragraph (2) of subsection
10 (d) or subsection (d)(3)(A), whichever is later.

11 (b) INTERVENTION.—

12 (1) REBUTTABLE PRESUMPTION.—In consid-
13 ering a motion to intervene in a covered civil action
14 or a civil action in which a covered consent decree
15 or settlement agreement has been proposed that is
16 filed by a person who alleges that the agency action
17 in dispute would affect the person, the court shall
18 presume, subject to rebuttal, that the interests of
19 the person would not be represented adequately by
20 the existing parties to the action.

21 (2) STATE, LOCAL, AND TRIBAL GOVERN-
22 MENTS.—In considering a motion to intervene in a
23 covered civil action or a civil action in which a cov-
24 ered consent decree or settlement agreement has
25 been proposed that is filed by a State, local, or tribal

1 government, the court shall take due account of
2 whether the movant—

3 (A) administers jointly with an agency that
4 is a defendant in the action the statutory provi-
5 sions that give rise to the regulatory action to
6 which the action relates; or

7 (B) administers an authority under State,
8 local, or tribal law that would be preempted by
9 the regulatory action to which the action re-
10 lates.

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

14 (1) be conducted pursuant to the mediation or
15 alternative dispute resolution program of the court
16 or by a district judge other than the presiding judge,
17 magistrate judge, or special master, as determined
18 appropriate by the presiding judge; and

19 (2) include any party that intervenes in the ac-
20 tion.

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

23 (1) IN GENERAL.—Not later than 60 days be-
24 fore the date on which a covered consent decree or
25 settlement agreement is filed with a court, the agen-

1 cy seeking to enter the covered consent decree or
2 settlement agreement shall publish in the Federal
3 Register and online—

4 (A) the proposed covered consent decree or
5 settlement agreement; and

6 (B) a statement providing—

7 (i) the statutory basis for the covered
8 consent decree or settlement agreement;
9 and

10 (ii) a description of the terms of the
11 covered consent decree or settlement agree-
12 ment, including whether it provides for the
13 award of attorneys' fees or costs and, if so,
14 the basis for including the award.

15 (2) PUBLIC COMMENT.—

16 (A) IN GENERAL.—An agency seeking to
17 enter a covered consent decree or settlement
18 agreement shall accept public comment during
19 the period described in paragraph (1) on any
20 issue relating to the matters alleged in the com-
21 plaint in the applicable civil action or addressed
22 or affected by the proposed covered consent de-
23 cree or settlement agreement.

1 (B) RESPONSE TO COMMENTS.—An agency
2 shall respond to any comment received under
3 subparagraph (A).

4 (C) SUBMISSIONS TO COURT.—When mov-
5 ing that the court enter a proposed covered con-
6 sent decree or settlement agreement or for dis-
7 missal pursuant to a proposed covered consent
8 decree or settlement agreement, an agency
9 shall—

10 (i) inform the court of the statutory
11 basis for the proposed covered consent de-
12 cree or settlement agreement and its
13 terms;

14 (ii) submit to the court a summary of
15 the comments received under subparagraph
16 (A) and the response of the agency to the
17 comments;

18 (iii) submit to the court a certified
19 index of the administrative record of the
20 notice and comment proceeding; and

21 (iv) make the administrative record
22 described in clause (iii) fully accessible to
23 the court.

24 (D) INCLUSION IN RECORD.—The court
25 shall include in the court record for a civil ac-

1 tion the certified index of the administrative
2 record submitted by an agency under subpara-
3 graph (C)(iii) and any documents listed in the
4 index which any party or amicus curiae appear-
5 ing before the court in the action submits to the
6 court.

7 (3) PUBLIC HEARINGS PERMITTED.—

8 (A) IN GENERAL.—After providing notice
9 in the Federal Register and online, an agency
10 may hold a public hearing regarding whether to
11 enter into a proposed covered consent decree or
12 settlement agreement.

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

15 (i) the agency shall—

16 (I) submit to the court a sum-
17 mary of the proceedings;

18 (II) submit to the court a cer-
19 tified index of the hearing record; and

20 (III) provide access to the hear-
21 ing record to the court; and

22 (ii) the full hearing record shall be in-
23 cluded in the court record.

24 (4) MANDATORY DEADLINES.—If a proposed
25 covered consent decree or settlement agreement re-

1 quires an agency action by a date certain, the agen-
2 cy shall, when moving for entry of the covered con-
3 sent decree or settlement agreement or dismissal
4 based on the covered consent decree or settlement
5 agreement, inform the court of—

6 (A) any required regulatory action the
7 agency has not taken that the covered consent
8 decree or settlement agreement does not ad-
9 dress;

10 (B) how the covered consent decree or set-
11 tlement agreement, if approved, would affect
12 the discharge of the duties described in sub-
13 paragraph (A); and

14 (C) why the effects of the covered consent
15 decree or settlement agreement on the manner
16 in which the agency discharges its duties is in
17 the public interest.

18 (e) SUBMISSION BY THE GOVERNMENT.—

19 (1) IN GENERAL.—For any proposed covered
20 consent decree or settlement agreement that con-
21 tains a term described in paragraph (2), the Attor-
22 ney General or, if the matter is being litigated inde-
23 pendently by an agency, the head of the agency shall
24 submit to the court a certification that the Attorney
25 General or head of the agency approves the proposed

1 covered consent decree or settlement agreement. The
2 Attorney General or head of the agency shall person-
3 ally sign any certification submitted under this para-
4 graph.

5 (2) TERMS.—A term described in this para-
6 graph is—

7 (A) in the case of a covered consent decree,
8 a term that—

9 (i) converts into a nondiscretionary
10 duty a discretionary authority of an agency
11 to propose, promulgate, revise, or amend
12 regulations;

13 (ii) commits an agency to expend
14 funds that have not been appropriated and
15 that have not been budgeted for the regu-
16 latory action in question;

17 (iii) commits an agency to seek a par-
18 ticular appropriation or budget authoriza-
19 tion;

20 (iv) divests an agency of discretion
21 committed to the agency by statute or the
22 Constitution of the United States, without
23 regard to whether the discretion was
24 granted to respond to changing cir-
25 cumstances, to make policy or managerial

1 choices, or to protect the rights of third
2 parties; or

3 (v) otherwise affords relief that the
4 court could not enter under its own au-
5 thority upon a final judgment in the civil
6 action; or

7 (B) in the case of a covered settlement
8 agreement, a term—

9 (i) that provides a remedy for a fail-
10 ure by the agency to comply with the
11 terms of the covered settlement agreement
12 other than the revival of the civil action re-
13 solved by the covered settlement agree-
14 ment; and

15 (ii) that—

16 (I) interferes with the authority
17 of an agency to revise, amend, or
18 issue rules under the procedures set
19 forth in chapter 5 of title 5, United
20 States Code, or any other statute or
21 Executive order prescribing rule-
22 making procedures for a rulemaking
23 that is the subject of the covered set-
24 tlement agreement;

1 (II) commits the agency to ex-
2 pend funds that have not been appro-
3 priated and that have not been budg-
4 eted for the regulatory action in ques-
5 tion; or

6 (III) for such a covered settle-
7 ment agreement that commits the
8 agency to exercise in a particular way
9 discretion which was committed to the
10 agency by statute or the Constitution
11 of the United States to respond to
12 changing circumstances, to make pol-
13 icy or managerial choices, or to pro-
14 tect the rights of third parties.

15 (f) REVIEW BY COURT.—

16 (1) AMICUS.—A court considering a proposed
17 covered consent decree or settlement agreement shall
18 presume, subject to rebuttal, that it is proper to
19 allow amicus participation relating to the covered
20 consent decree or settlement agreement by any per-
21 son who filed public comments or participated in a
22 public hearing on the covered consent decree or set-
23 tlement agreement under paragraph (2) or (3) of
24 subsection (d).

25 (2) REVIEW OF DEADLINES.—

1 (A) PROPOSED COVERED CONSENT DE-
2 CREES.—For a proposed covered consent de-
3 cree, a court shall not approve the covered con-
4 sent decree unless the proposed covered consent
5 decree allows sufficient time and incorporates
6 adequate procedures for the agency to comply
7 with chapter 5 of title 5, United States Code,
8 and other applicable statutes that govern rule-
9 making and, unless contrary to the public inter-
10 est, the provisions of any Executive order that
11 governs rulemaking.

12 (B) PROPOSED COVERED SETTLEMENT
13 AGREEMENTS.—For a proposed covered settle-
14 ment agreement, a court shall ensure that the
15 covered settlement agreement allows sufficient
16 time and incorporates adequate procedures for
17 the agency to comply with chapter 5 of title 5,
18 United States Code, and other applicable stat-
19 utes that govern rulemaking and, unless con-
20 trary to the public interest, the provisions of
21 any Executive order that governs rulemaking.

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

1 (1) the number, identity, and content of covered
2 civil actions brought against and covered consent de-
3 crees or settlement agreements entered against or
4 into by the agency; and

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

6 (A) each covered consent decree or settle-
7 ment agreement entered against or into by the
8 agency; and

9 (B) any award of attorneys fees or costs in
10 a civil action resolved by a covered consent de-
11 cree or settlement agreement entered against or
12 into by the agency.

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

14 If an agency moves a court to modify a covered con-
15 sent decree or settlement agreement and the basis of the
16 motion is that the terms of the covered consent decree or
17 settlement agreement are no longer fully in the public in-
18 terest due to the obligations of the agency to fulfill other
19 duties or due to changed facts and circumstances, the
20 court shall review the motion and the covered consent de-
21 cree or settlement agreement de novo.

22 **SEC. 405. EFFECTIVE DATE.**

23 This title shall apply to—

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

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

