



Legislative Bulletin.....January 13, 2015

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H.R. 185 — Regulatory Accountability Act of 2015

**H.R. 185 – Regulatory Accountability Act of 2015
(Rep. Goodlatte, R-VA)**

Order of Business: The bill is scheduled to be considered on January 13, 2015, subject to a closed [rule](#), providing one hour of debate equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services.

Summary: [H.R. 185](#) would define a “major rule” as any rule that the [Administrator of the Office of Information and Regulatory Affairs](#) determines is likely to impose:

- An annual cost on the economy of \$100,000,000 or more, adjusted annually for inflation;
- A major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions;
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or
- Significant impacts on multiple sectors of the economy.

A “high-impact rule” is defined as any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose an annual cost on the economy of \$1,000,000,000 or more, adjusted annually for inflation.

A “negative-impact on jobs and wages rule” is defined as any rule that the agency that made the rule or the Administrator of the Office of Information and Regulatory Affairs determines is likely to:

- In one or more sectors of the economy that has a 6-digit code under the North American Industry Classification System, reduce employment not related to new regulatory compliance by 1 percent or more annually during the 1-year, 5-year, or 10-year period after implementation;

- In one or more sectors of the economy that has a 6-digit code under the North American Industry Classification System, reduce average weekly wages for employment not related to new regulatory compliance by 1 percent or more annually during the 1-year, 5-year, or 10-year period after implementation;
- In any industry area in which the most recent annual unemployment rate for the industry area is greater than 5 percent, as determined by the Bureau of Labor Statistics in the Current Population Survey, reduce employment not related to new regulatory compliance during the first year after implementation; or
- In any industry area in which the Bureau of Labor Statistics projects in the Occupational Employment Statistics program that the employment level will decrease by 1 percent or more, would further reduce employment not related to new regulatory compliance during the first year after implementation.

Section 3 of the bill would revise procedures for rule making by amending [Section 553 of title 5, United States Code](#) to require a federal agency, in the rule making process, to make all preliminary and final factual determinations based on evidence and to consider:

- The legal authority under which a rule may be proposed, including whether a rule making is required by statute, and if so, whether by a specific date, or whether the agency has discretion to commence a rule making;
- Other statutory considerations applicable to whether the agency can or should propose a rule or undertake other agency action;
- The specific nature and significance of the problem the agency may address with a rule (including the degree and nature of risks the problem poses and the priority of addressing those risks compared to other matters or activities within the agency's jurisdiction), whether the problem warrants new agency action, and the countervailing risks that may be posed by alternatives for new agency action;
- Whether existing rules have created or contributed to the problem the agency may address with a rule and whether those rules could be amended or rescinded to address the problem in whole or part;
- Any reasonable alternatives for a new rule or other response identified by the agency or interested persons, including not only responses that mandate particular conduct or manners of compliance.

In the case of a rule making for a major rule, a high-impact rule, a negative-impact on jobs and wages rule, or a rule that involves a novel legal or policy issue arising out of statutory mandates, not later than 90 days before a notice of proposed rule making is published in the Federal Register, an agency shall publish advance notice in the Federal Register and shall:

- Include a written statement identifying, at a minimum: (1) the nature and significance of the problem the agency may address with a rule; (2) the legal authority under which a rule may be proposed; (3) preliminary information available to the agency concerning the other considerations specified in the bill; (4) in the case of a rule that involves a novel legal or policy issue arising out of statutory mandates, the nature of and potential reasons to adopt the novel legal or policy position upon which the agency may base a proposed rule; and (5) an achievable objective for the rule and metrics by which the agency will measure progress toward that objective;
- Solicit written data, views or argument from interested persons concerning the information and issues addressed in the advance notice; and
- Provide for a period of not fewer than [60 days for interested persons to submit such written data, views, or argument to the agency.

The bill specifies the minimum amount of information that must be included in an advance notice of a proposed rule making by requiring an agency to consult with the Administrator of the Office of Information and Regulatory Affairs before it determines to propose a rule.

Following notice of a proposed rule making, receipt of comments on the proposed rule, and any hearing and before adoption of any high-impact rule, a Federal agency shall hold a hearing, unless such hearing is waived by all participants in the rule making other than the agency. An agency shall provide a reasonable opportunity for cross-examination at such hearing

H.R. 185 requires the Administrator of the Office of Information and Regulatory Affairs to issue guidelines to promote coordination, simplification and harmonization of agency rules during the rule making process.

Nothing in Section 3 applies to rule makings that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

Section 4 of the bill would impose new requirements for issuing any major guidance or guidance that involves a novel legal or policy issue arising out of statutory mandates. A Federal agency shall:

- Make and document a reasoned determination that assures that such guidance is understandable and complies with relevant statutory objectives and regulatory provisions; summarizes the evidence and data on which the agency will base the guidance; identifies the costs and benefits; describes alternatives to such guidance and their costs and benefits;
- Confer with the Administrator of the Office of Information and Regulatory Affairs on the issuance of such guidance to assure that the guidance is reasonable, understandable, consistent with relevant statutory and regulatory provisions, requirements, or practices of

other agencies, and does not produce costs that are unjustified by the guidance's benefits, and is otherwise appropriate.

Section 5 of the bill would provide for electronic access to transcripts of testimony and exhibits and other papers filed in a rule-making proceeding. The section would require the record of decision in a rule-making proceeding to include information from a hearing under the Information Quality Act or on a high-impact rule.

The bill would also require an agency to grant a petition for a hearing in the case of a major rule, unless the agency reasonably determines that a hearing would not advance consideration of the rule or would unreasonably delay completion of the rule making. Nothing in section 5 applies to rule makings that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

Section 6 provides that an agency's denial of an Information Quality Act ([section 515 of Public Law 106-554](#)) petition, or a failure to grant or deny such petition within 90 days, is reviewable by a court as a final action. The section allows immediate judicial review of interim rules, other than in cases involving national security interests, issued without compliance with the notice requirements of the bill.

Section 7 would revise the standards for the scope of the judicial review of agency rule-making to prohibit a court from deferring to an agency's: interpretation of a rule if the agency did not comply with Administrative Procedure Act (Section 553 of title 5, United States Code) requirements; determination of the costs and benefits or other economic or risk assessment if the agency failed to conform to guidelines on such determinations and assessments established by the Administrator; determinations made in the adoption of an interim rule; or guidance.

Section 8 defines "substantial evidence" as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the record considered as a whole, taking into account whatever in the record fairly detracts from the weight of the evidence relied upon by the agency to support its decision.

Section 9 provides that the amendments made by the bill to specified provisions of Federal law shall not apply to any rule makings pending or completed on the bill's enactment date.

AMENDMENTS MADE IN ORDER

- 1) **McKinley (R-WV)**. This amendment would ensure that the Agencies, when developing regulations, take into consideration and account for low-income populations.
- 2) **Johnson, Hank (D-GA)**. This amendment would exempt from H.R. 185 all rules or guidance that the Director of the Office of Management and Budget determines would result in net job creation.
- 3) **Jackson Lee (D-TX)**. This amendment would exempt any rule or guidance proposed, issued, or made by the Secretary of Homeland Security.

- 4) [Connolly](#) (D-VA). This amendment would exempt any rule or guidance pertaining to public health or safety.

Additional Information: A list of cosponsors for H.R. 185 can be found [here](#). A letter in support of H.R. 185 from the U.S. Chamber of Commerce, the American Chemistry Council, the National Association of Manufacturers, and other organizations can be found [here](#).

A similar bill ([H.R. 2122](#)) was introduced in the 113th Congress on May 23, 2013. The report (H. Rept. 113- 237) accompanying H.R. 2122 can be found [here](#).

Committee Action: The bill was introduced on January 7, 2015, and was referred to the House Judiciary Committee.

Administration Position: The White House released a [statement of administrative policy](#) strongly opposing H.R. 185. According to the statement, the President’s senior advisors would recommend that he veto the bill.

Cost to Taxpayers: No Congressional Budget Office (CBO) estimate is available.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO estimate is available.

Constitutional Authority: Congress has the power to enact this legislation pursuant to the following: Article I, Section 1, Clause 1 of the United States Constitution, in that the legislation concerns the exercise of legislative powers generally granted to Congress by that section, including the exercise of those powers when delegated by Congress to the Executive; Article I, Section 8, Clauses 1 to 17, and Section 9, Clauses 1 to 2, 4, and 7 of the United States Constitution, in that the legislation concerns the exercise of specific legislative powers granted to Congress by those sections, including the exercise of those powers when delegated by Congress to the Executive; Article I, Section 8, clause 18 of the United States Constitution, in that the legislation exercises legislative power granted to Congress by that clause “to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof;” and Article III, Section 1, Clause 1, Sentence 1, Section 2, Clause 1, and Section 2, Clause 2, Sentence 2, of the Constitution, in that the legislation defines or affects judicial powers and cases that are subject to legislation by Congress.

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