

Chrysler
Clinger
Coble
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Creameans
Cubin
Cunningham
Danner
Davis
Deal
DeLay
Diaz-Balart
Dickey
Doolley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Fields (TX)
Flanagan
Foley
Forbes
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Gilman
Goodlatte
Goodling
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (TX)
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Heineman
Herger
Hilleary
Hobson

NOT VOTING—9

Brown (CA) Istook Rush
Gonzalez Kleczka Thornton
Hunter Moakley Velazquez

So the amendment was not agreed to. After some further time,

35.13 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment submitted by Mr. CONYERS:

Page 9, line 21, strike the close quotation marks and the period following and insert after line 21 the following:

“(5) In a rulemaking involving a major rule, the agency conducting the rulemaking shall make a written record describing the subject of all contacts the agency made with persons outside the agency relating to such rulemaking. If the contact was made with a non-governmental person, the written record

of such contact shall be made available, upon request to the public.”.

It was decided in the affirmative { Yeas 406
Nays 23

35.14

[Roll No. 186]

AYES—406

Abercrombie Dixon Jefferson
Ackerman Doggett Johnson (CT)
Allard Dooley Johnson (SD)
Andrews Dornan Johnson, E. B.
Bachus Doyle Johnston
Baesler Dreier Jones
Baker (LA) Duncan Kanjorski
Baldacci Dunn Kaptur
Ballenger Durbin Kасhich
Barcia Edwards Kelly
Barr Ehrlich Kennedy (MA)
Barrett (NE) Emerson Kennedy (RI)
Barrett (WI) Engel Kennelly
Bartlett English Kildee
Barton Ensign Kim
Bass Eshoo Kingston
Bateman Evans Kleczka
Becerra Everett Klink
Beilenson Ewing Klug
Bentsen Farr Knollenberg
Berman Fattah Kolbe
Bevill Fawell LaFalce
Billbray Fazio LaHood
Bilirakis Lantos Fields (LA)
Bishop Fields (TX) Largent
Biley Filner Latham
Blute Flake LaTourette
Boehlert Flanagan Laughlin
Boehner Foglietta Lázio
Bonior Foley Leach
Bono Ford Levin
Borski Fowler Lewis (CA)
Boucher Fox Lewis (GA)
Brewster Frank (MA) Lewis (KY)
Browder Franks (CT) Lightfoot
Brown (CA) Franks (NJ) Lincoln
Brown (FL) Frelinghuysen Lipinski
Brown (OH) Frisa Livingston
Brownback Frost LoBiondo
Bryant (TN) Funderburk Lofgren
Bryant (TX) Furse Longley
Bunn Gallegly Lowey
Bunning Ganske Lucas
Burr Gejdenson Luther
Burton Gekas Maloney
Buyer Gephardt Manton
Callahan Geren Manzullo
Calvert Gibbons Markey
Camp Gilchrest Martinez
Canady Gillmor Martini
Cardin Gilman Mascara
Castle Goodlatte Matsui
Chabot Goodling McCarthy
Chambliss Gordon McCollum
Chapman Goss McCreery
Chenoweth Graham McDade
Christensen Green McDermott
Christen McHale
Clay McHugh
Clayton Gutierrez
Clement Gutknecht
Clinger Hall (OH)
Clyburn Hall (TX)
Coble Hamilton
Coleman Hansen Meek
Collins (GA) Harman Menendez
Collins (IL) Hastert Metcalf
Collins (MI) Hastings (FL) Meyers
Condit Hastings (WA) Mfume
Conyers Hayes Mica
Costello Hefley Miller (CA)
Cox Hefner Miller (FL)
Coyne Heineman Mineta
Cramer Herger Minge
Crane Hilleary Mink
Crapo Hilliard Mollohan
Creameans Hinchey Montgomery
Cubin Hobson Moorhead
Cunningham Hoekstra Moran
Danner Hoke Morella
Davis Holden Murtha
de la Garza Horn Myrick
Deal Hostettler Nadler
DeFazio Houghton Neal
DeLauro Hoyer Neumann
Dellums Hutchinson Ney
Deutsch Hyde Norwood
Diaz-Balart Inglis Nussle
Dickey Istook Oberstar
Dicks Jackson-Lee Obey
Dingell Jacobs Olver

Ortiz Salmon Thompson
Orton Sanders Thornberry
Owens Sanford Thornton
Oxley Sawyer Thurman
Packard Saxton Tiahrt
Pallone Scarborough Torkildsen
Parker Schaefer Torres
Pastor Schiff Torricelli
Paxon Schroeder Towns
Payne (NJ) Schumer Traficant
Payne (VA) Scott Tucker
Pelosi Seastrand Upton
Peterson (FL) Sensenbrenner Velazquez
Peterson (MN) Serrano Vento
Petri Shadegg Visclosky
Pickett Shaw Volkmer
Pombo Shays Vucanovich
Pomeroy Shuster Waldholz
Porter Sisisky Walker
Portman Skaggs Walsh
Poshard Skeen Wamp
Pryce Skelton Ward
Quillen Slaughter Waters
Quinn Smith (MI) Watt (NC)
Radanovich Smith (NJ) Watts (OK)
Rahall Smith (TX) Waxman
Ramstad Smith (WA) Weldon (FL)
Rangel Solomon Weldon (PA)
Reed Spence Weller
Regula Spratt White
Reynolds Stark Whitfield
Richardson Stearns Williams
Riggs Stenholm Wilson
Rivers Stockman Wise
Roberts Stokes Wolf
Roemer Studds Woolsey
Rogers Stupak Wyden
Rohrabacher Talent Wynn
Ros-Lehtinen Tanner Yates
Rose Tate Young (AK)
Roth Tauzin Young (FL)
Roukema Taylor (MS) Zelliff
Roybal-Allard Taylor (NC) Zimmer
Royce Tejada
Sabo Thomas

NOES—23

Archer DeLay Linder
Army Doolittle McIntosh
Baker (CA) Ehlers Molinari
Beureter Forbes Myers
Bonilla Hancock Nethercutt
Coburn Hayworth Stump
Combest Johnson, Sam Wicker
Cooley King

NOT VOTING—5

Gonzalez Moakley Souder
Hunter Rush

So the amendment was agreed to.

After some further time, The SPEAKER pro tempore, Mr. HASTERT, assumed the Chair.

When Mr. BARRETT, Chairman, pursuant to House Resolution 100, reported the bill back to the House with an amendment adopted by the Committee.

The previous question having been ordered by said resolution.

The following amendment, reported from the Committee of the Whole House on the state of the Union, was agreed to:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Regulatory Reform and Relief Act”.

TITLE I—STRENGTHENING REGULATORY FLEXIBILITY

SEC. 101. JUDICIAL REVIEW.

(a) AMENDMENT.—Section 611 of title 5, United States Code, is amended to read as follows:

“§ 611. Judicial review

“(a)(1) Except as provided in paragraph (2), not later than one year notwithstanding any other provision of law after the effective date of a final rule with respect to which an agency—

“(A) certified, pursuant to section 605(b), that such rule would not have a significant

economic impact on a substantial number of small entities; or

“(B) prepared a final regulatory flexibility analysis pursuant to section 604, an affected small entity may petition for the judicial review of such certification or analysis in accordance with the terms of this subsection. A court having jurisdiction to review such rule for compliance with the provisions of section 553 or under any other provision of law shall have jurisdiction to review such certification or analysis. In the case where an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection shall be filed not later than one year notwithstanding any other provision of law after the date the analysis is made available to the public.

“(2) For purposes of this subsection, the term ‘affected small entity’ means a small entity that is or will be adversely affected by the final rule.

“(3) Nothing in this subsection shall be construed to affect the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

“(4)(A) In the case where the agency certified that such rule would not have a significant economic impact on a substantial number of small entities, the court may order the agency to prepare a final regulatory flexibility analysis pursuant to section 604 if the court determines, on the basis of the rulemaking record, that the certification was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

“(B) In the case where the agency prepared a final regulatory flexibility analysis, the court may order the agency to take corrective action consistent with the requirements of section 604 if the court determines, on the basis of the rulemaking record, that the final regulatory flexibility analysis was prepared by the agency without observance of procedure required by section 604.

“(5) If, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (4) (or such longer period as the court may provide), the agency fails, as appropriate—

“(A) to prepare the analysis required by section 604; or

“(B) to take corrective action consistent with the requirements of section 604, the court may stay the rule or grant such other relief as it deems appropriate.

“(6) In making any determination or granting any relief authorized by this subsection, the court shall take due account of the rule of prejudicial error.

“(b) In an action for the judicial review of a rule, any regulatory flexibility analysis for such rule (including an analysis prepared or corrected pursuant to subsection (a)(4)) shall constitute part of the whole record of agency action in connection with such review.

“(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply only to final agency rules issued after the date of enactment of this Act.

SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL FOR ADVOCACY.

(a) IN GENERAL.—Section 612 of title 5, United States Code, is amended by adding at the end the following new subsection:

“(d) ACTION BY THE SBA CHIEF COUNSEL FOR ADVOCACY.—

“(1) TRANSMITTAL OF PROPOSED RULES AND INITIAL REGULATORY FLEXIBILITY ANALYSIS TO SBA CHIEF COUNSEL FOR ADVOCACY.—On or be-

fore the 30th day preceding the date of publication by an agency of general notice of proposed rulemaking for a rule, the agency shall transmit to the Chief Counsel for Advocacy of the Small Business Administration—

“(A) a copy of the proposed rule; and

“(B)(i) a copy of the initial regulatory flexibility analysis for the rule if required under section 603; or

“(ii) a determination by the agency that an initial regulatory flexibility analysis is not required for the proposed rule under section 603 and an explanation for the determination.

“(2) STATEMENT OF EFFECT.—On or before the 15th day following receipt of a proposed rule and initial regulatory flexibility analysis from an agency under paragraph (1), the Chief Counsel for Advocacy may transmit to the agency a written statement of the effect of the proposed rule on small entities.

“(3) RESPONSE.—If the Chief Counsel for Advocacy transmits to an agency a statement of effect on a proposed rule in accordance with paragraph (2), the agency shall publish the statement, together with the response of the agency to the statement, in the Federal Register at the time of publication of general notice of proposed rulemaking for the rule.

“(4) SPECIAL RULE.—Any proposed rules issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such an institution, credit unions, or government sponsored housing enterprises or to protect the Federal deposit insurance funds shall not be subject to the requirements of this subsection.”.

(b) CONFORMING AMENDMENT.—Section 603(a) of title 5, United States Code, is amended by inserting “in accordance with section 612(d)” before the period at the end of the last sentence.

SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF COUNSEL FOR ADVOCACY.

It is the sense of Congress that the Chief Counsel for Advocacy of the Small Business Administration should be permitted to appear as amicus curiae in any action or case brought in a court of the United States for the purpose of reviewing a rule.

TITLE II—REGULATORY IMPACT ANALYSES

SEC. 201. DEFINITIONS.

Section 551 of title 5, United States Code, is amended by striking “and” at the end of paragraph (13), by striking the period at the end of paragraph (14) and inserting a semicolon, and by adding at the end the following:

“(15) ‘major rule’ means any rule subject to section 553(c) that is likely to result in—

“(A) an annual effect on the economy of \$50,000,000 or more;

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

“(C) 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; and

“(16) ‘Director’ means the Director of the Office of Management and Budget.”.

SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.

Section 553 of title 5, United States Code, is amended by adding at the end the following:

“(f)(1) Each agency shall for a proposed major rule publish in the Federal Register, at least 90 days before the date of publication of the general notice required under subsection (b), a notice of intent to engage in rulemaking.

“(2) A notice under paragraph (1) for a proposed major rule shall include, to the extent possible, the information required to be included in a regulatory impact analysis for the rule under subsection (i)(4)(B) and (D).

“(3) For a major rule proposed by an agency, the head of the agency shall include in a general notice under subsection (b), a preliminary regulatory impact analysis for the rule prepared in accordance with subsection (i).

“(4) For a final major rule, the agency shall include with the statement of basis and purpose—

“(A) a summary of a final regulatory impact analysis of the rule in accordance with subsection (i); and

“(B) a clear delineation of all changes in the information included in the final regulatory impact analysis under subsection (i) from any such information that was included in the notice for the rule under subsection (b).

The agency shall provide the complete text of a final regulatory impact analysis upon request.

“(5) The issuance of a notice of intent to engage in rulemaking under paragraph (1) and the issuance of a preliminary regulatory impact analysis under paragraph (3) shall not be considered final agency action for purposes of section 704.

“(6) In a rulemaking involving a major rule, the agency conducting the rulemaking shall make a written record describing the subject of all contacts the agency made with persons outside the agency relating to such rulemaking. If the contact was made with a non-governmental person, the written record of such contact shall be made available, upon request to the public.”.

SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES; AND EXTENSION OF COMMENT PERIOD.

(a) HEARING REQUIREMENT.—Section 553 of title 5, United States Code, as amended by section 202, is further amended by adding after subsection (f) the following:

“(g) If more than 100 interested persons acting individually submit requests for a hearing to an agency regarding any major rule proposed by the agency, the agency shall hold such a hearing on the proposed rule.”.

(b) EXTENSION OF COMMENT PERIOD.—Section 553 of title 5, United States Code, as amended by subsection (a), is further amended by adding after subsection (g) the following:

“(h) If during the 90-day period beginning on the date of publication of a notice under subsection (f) for a proposed major rule, or if during the period beginning on the date of publication or service of notice required by subsection (b) for a proposed major rule, more than 100 persons individually contact the agency to request an extension of the period for making submissions under subsection (c) pursuant to the notice, the agency—

“(1) shall provide an additional 30-day period for making those submissions; and

“(2) may not adopt the rule until after the additional period.”.

(c) RESPONSE TO COMMENTS.—Section 553(c) of title 5, United States Code, is amended—

(1) by inserting “(1)” after “(c)”; and

(2) by adding at the end the following:

“(2) Each agency shall publish in the Federal Register, with each rule published under section 552(a)(1)(D), responses to the substance of the comments received by the agency regarding the rule.”.

SEC. 204. REGULATORY IMPACT ANALYSIS.

Section 553 of title 5, United States Code, as amended by section 203, is amended by adding after subsection (h) the following:

“(i)(1) Each agency shall, in connection with every major rule, prepare, and, to the extent permitted by law, consider, a regulatory impact analysis. Such analysis may be combined with any regulatory flexibility analysis performed under sections 603 and 604.

“(2) Each agency shall initially determine whether a rule it intends to propose or issue is a major rule. The Director shall have authority to order a rule to be treated as a major rule and to require any set of related rules to be considered together as a major rule.

“(3) Except as provided in subsection (j), agencies shall prepare—

“(A) a preliminary regulatory impact analysis, which shall be transmitted, along with a notice of proposed rulemaking, to the Director at least 60 days prior to the publication of notice of proposed rulemaking, and

“(B) a final regulatory impact analysis, which shall be transmitted along with the final rule at least 30 days prior to the publication of a major rule.

“(4) Each preliminary and final regulatory impact analysis shall contain the following information:

“(A) A description of the potential benefits of the rule, including any beneficial effects that cannot be quantified in monetary terms and the identification of those likely to receive the benefits.

“(B) An explanation of the necessity, legal authority, and reasonableness of the rule and a description of the condition that the rule is to address.

“(C) A description of the potential costs of the rule, including any adverse effects that cannot be quantified in monetary terms, and the identification of those likely to bear the costs.

“(D) An analysis of alternative approaches, including market based mechanisms, that could substantially achieve the same regulatory goal at a lower cost and an explanation of the reasons why such alternative approaches were not adopted, together with a demonstration that the rule provides for the least costly approach.

“(E) A statement that the rule does not conflict with, or duplicate, any other rule or a statement of the reasons why such a conflict or duplication exists.

“(F) A statement of whether the rule will require on-site inspections or whether persons will be required by the rule to maintain any records which will be subject to inspection, and a statement of whether the rule will require persons to obtain licenses, permits, or other certifications including specification of any associated fees or fines.

“(G) An estimate of the costs to the agency for implementation and enforcement of the rule and of whether the agency can be reasonably expected to implement the rule with the current level of appropriations.

“(5)(A) the Director is authorized to review and prepare comments on any preliminary or final regulatory impact analysis, notice of proposed rulemaking, or final rule based on the requirements of this subsection.

“(B) Upon the request of the Director, an agency shall consult with the Director concerning the review of a preliminary impact analysis or notice of proposed rulemaking and shall refrain from publishing its preliminary regulatory impact analysis or notice of proposed rulemaking until such review is concluded. The Director’s review may not take longer than 90 days after the date of the request of the Director.

“(6)(A) An agency may not adopt a major rule unless the final regulatory impact analysis for the rule is approved or commented

upon in writing by the Director or by an individual designated by the Director for that purpose.

“(B) Upon receiving notice that the Director intends to comment in writing with respect to any final regulatory impact analysis or final rule, the agency shall refrain from publishing its final regulatory impact analysis or final rule until the agency has responded to the Director’s comments and incorporated those comments in the agency’s response in the rulemaking file. If the Director fails to make such comments in writing with respect to any final regulatory impact analysis or final rule within 90 days of the date the Director gives such notice, the agency may adopt such final regulatory impact analysis or final rule.

“(7) Notwithstanding section 551(16), for purposes of this subsection with regard to any rule proposed or issued by an appropriate Federal banking agency (as that term is defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), the National Credit Union Administration, or the Office of Federal Housing Enterprise Oversight, the term ‘Director’ means the head of such agency, Administration, or Office.”.

SEC. 205. STANDARD OF CLARITY.

Section 553 of title 5, United States Code, as amended in section 204, is amended by adding after subsection (i) the following:

“(j) To the extent practicable, the head of an agency shall seek to ensure that any proposed major rule or regulatory impact analysis of such a rule is written in a reasonably simple and understandable manner and provides adequate notice of the content of the rule to affected persons.”.

SEC. 206. EXEMPTIONS.

Section 553 of title 5, United States Code, as amended by section 205, is further amended by adding after subsection (j) the following:

“(k)(1) The provisions of this section regarding major rules shall not apply to—

“(A) any regulation that responds to an emergency situation if such regulation is reported to the Director as soon as is practicable;

“(B) any regulation for which consideration under the procedures of this section would conflict with deadlines imposed by statute or by judicial order;

“(C) any regulation proposed or issued in connection with the implementation of monetary policy or to ensure the safety and soundness of federally insured depository institutions, any affiliate of such institution, credit unions, or government sponsored housing enterprises regulated by the Office of Federal Housing Enterprise Oversight;

“(D) any agency action that the head of the agency certifies is limited to interpreting, implementing, or administering the internal revenue laws of the United States, including any regulation proposed or issued in connection with ensuring the collection of taxes from a subsidiary of a foreign company doing business in the United States; and

“(E) any regulation proposed or issued pursuant to section 553 of title 5, United States Code, in connection with imposing trade sanctions against any country that engages in illegal trade activities against the United States that are injurious to American technology, jobs, pensions, or general economic well-being.

A regulation described in subparagraph (B) shall be reported to the Director with a brief explanation of the conflict and the agency, in consultation with the Director, shall, to the extent permitted by statutory or judicial deadlines, adhere to the process of this section.

“(2) The Director may in accordance with the purposes of this section exempt any class

or category of regulations from any or all requirements of this section.

“(3) For purposes of paragraph (1), the term ‘emergency situation’ means a situation that is—

“(A) immediately impending and extraordinary in nature, or

“(B) demanding attention due to a condition, circumstance, or practice reasonably expected to cause death, serious illness, or severe injury to humans or substantial endangerment to private property or the environment if no action is taken.”.

SEC. 207. REPORT.

The Director of the Office of Management and Budget shall submit a report to the Congress no later than 24 months after the date of the enactment of this Act containing an analysis of rulemaking procedures of Federal agencies and an analysis of the impact of those rulemaking procedures on the regulated public and regulatory process.

SEC. 208. EFFECTIVE DATE.

The amendment made by this title shall apply only to final agency rules issued after rulemaking begun after the date of enactment of this Act.

TITLE III—PROTECTIONS

SEC. 301. PRESIDENTIAL ACTION.

Pursuant to the authority of section 7301 of title 5, United States Code, the President shall, within 180 days of the date of the enactment of this title, prescribe regulations for employees of the executive branch to ensure that Federal laws and regulations shall be administered consistent with the principle that any person shall, in connection with the enforcement of such laws and regulations—

(1) be protected from abuse, reprisal, or retaliation, and

(2) be treated fairly, equitably, and with due regard for such person’s rights under the Constitution.

The bill, as amended, was ordered to be engrossed and read a third time, was read a third time by title.

The question being put, viva voce,
Will the House pass said bill?

The SPEAKER pro tempore, Mr. HASTERT, announced that the yeas had it.

Mr. GEKAS objected to the vote on the ground that a quorum was not present and not voting.

A quorum not being present,

The roll was called under clause 4, rule XV, and the call was taken by electronic device.

When there appeared { Yeas 415
Nays 15

¶35.15 [Roll No. 187]
YEAS—415

Abercrombie	Berman	Burr
Ackerman	Bevill	Burton
Allard	Bilbray	Buyer
Andrews	Bilirakis	Callahan
Archer	Bishop	Calvert
Army	Bliley	Camp
Bachus	Blute	Canady
Baesler	Boehlert	Cardin
Baker (CA)	Boehner	Castle
Baker (LA)	Bonilla	Chabot
Baldacci	Bono	Chambliss
Ballenger	Borski	Chapman
Barcia	Boucher	Chenoweth
Barr	Brewster	Christensen
Barrett (NE)	Browder	Chrysler
Barrett (WI)	Brown (CA)	Clay
Bartlett	Brown (FL)	Clayton
Barton	Brown (OH)	Clement
Bass	Brownback	Clinger
Bateman	Bryant (TN)	Clyburn
Beilenson	Bryant (TX)	Coble
Bentsen	Bunn	Coburn
Bereuter	Bunning	Coleman