

Calendar No. 522

114TH CONGRESS }
2d Session }

SENATE

{ REPORT
114-282 }

SMARTER REGS ACT OF 2015

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 1817

TO IMPROVE THE EFFECTIVENESS OF MAJOR RULES IN
ACCOMPLISHING THEIR REGULATORY OBJECTIVES BY PRO-
MOTING RETROSPECTIVE REVIEW, AND FOR OTHER PURPOSES



JUNE 20, 2016.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

59-010

WASHINGTON : 2016

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SMARTER REGS ACT OF 2015

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Mr. JOHNSON, from the Committee on Homeland Security and Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 1817]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 1817) to improve the effectiveness of major rules in accomplishing their regulatory objectives by promoting retrospective review, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

The purpose of S. 1817, the Smarter Regulations Through Advance Planning and Review Act of 2015, is to improve the effectiveness of major rules in accomplishing their regulatory objectives by requiring retrospective review. S. 1817 requires agencies to review the effectiveness of major rules within ten years of the rule becoming final. When drafting major regulations, agencies must prepare for these future assessments through formulation of a retrospective review plan. Agencies issuing major rules must commit to a time-frame for reviewing the regulation, a plan for that review, and the metrics they will collect to facilitate that review while taking into account the burden to the public in providing that information.

II. BACKGROUND AND NEED FOR THE LEGISLATION

Every president since President Carter has initiated some type of retrospective review or “lookback” of existing regulations to identify regulations that are no longer necessary to achieve intended goals or otherwise require updating to address current circumstances.¹ In Executive Orders 13563² and 13610,³ President Obama directed agencies to develop and submit to the Office of Information and Regulatory Affairs (OIRA) a preliminary plan for “periodic review of . . . existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed.”⁴ Office of Management and Budget (OMB) guidance has directed public participation in retrospective reviews, setting priorities in implementing retrospective review plans, and reporting on the status of these efforts.

In subsequent guidance to agencies, OMB directed agencies to design and write future regulations in ways that facilitate evaluation of their consequences and thus promote retrospective analyses.⁵ However, after reviewing the progress of retrospective review efforts in 2014, the Government Accountability Office recommended that OMB, as part of its oversight role, strengthen compliance by confirming that agencies have identified how they will assess the performance of regulations in the future.⁶

The Administrative Conference of the United States (ACUS) has also recommended that agencies establish a framework, at the time of formulation, for reassessing regulations in the future.⁷ This could include considering methodology, measurable outcomes, a plan for gathering data, key assumptions in the underlying regulatory impact analysis, “a target timeframe or frequency” for reassessment, and “a discussion of how the public and other government agencies . . . will be involved in the review.”⁸ A comprehensive look at retrospective review efforts conducted as part of the ACUS recommendations found that “integrating ex post analysis into the design of a new rule can make future ex post review more efficient (thus requiring fewer staff resources) and break down the dichotomy and tension between looking back and looking forward. In effect, it would make looking back part of improving the quality

¹GOV'T ACCOUNTABILITY OFFICE, GAO-07-791, REEXAMINING REGULATIONS: OPPORTUNITIES EXIST TO IMPROVE EFFECTIVENESS AND TRANSPARENCY OF RETROSPECTIVE REVIEWS 10 (2007), available at <http://www.gao.gov/new.items/d07791.pdf> (“Every president since President Carter has directed agencies to evaluate or reconsider existing regulations. For example, President Carter’s Executive Order 12044 required agencies to periodically review existing rules; one charge of President Reagan’s task force on regulatory relief was to recommend changes to existing regulations; President George H.W. Bush instructed agencies to identify existing regulations to eliminate unnecessary regulatory burden; and President Clinton, under section 5 of Executive Order 12866, required agencies to develop a program to ‘periodically review’ existing significant regulations.”).

²Exec. Order No. 13563, 76 Fed. Reg. 3,821 (Jan. 21, 2011).

³Exec. Order No. 13610, 77 Fed. Reg. 28,469 (May 10, 2012).

⁴Exec. Order No. 13563, *supra.*, note 2.

⁵Memorandum from Cass Sunstein to the Heads of Executive Departments and Agencies, M-11-19 (Apr. 25, 2011). The memorandum directed agencies to “give careful consideration to how best to promote empirical testing of the effects of rules both in advance and retrospectively.” *Id.*

⁶GOV'T ACCOUNTABILITY OFFICE, GAO-14-268, AGENCIES OFTEN MADE REGULATORY CHANGES, BUT COULD STRENGTHEN LINKAGES TO PERFORMANCE GOALS 36 (2014), available at <http://www.gao.gov/assets/670/662517.pdf>.

⁷Admin. Conference of the U.S., Recommendation, Retrospective Review of Agency Rules, 2014-5 (Dec. 9, 2014).

⁸*Id.*

of looking forward.”⁹ Indeed, there is evidence that there are quality-enhancing effects of retrospective review of existing rules which redound to the prospective analysis of new rules.¹⁰

The American Bar Association (ABA) Section of Administrative Law and Regulatory Practice recently adopted a resolution urging Congress to make multiple reforms to the Administrative Procedure Act, including promoting retrospective review.¹¹ The ABA built upon both the ACUS recommendation and the OMB memorandum recommending that agencies begin to include a plan for future assessment of the effectiveness of new major rules. The ABA resolved that “such a plan should identify those objectives and describe information the agency believes will enable it to assess the effectiveness of the rule in accomplishing its objectives. . . . The plan should also describe how the agency intends to compile the relevant information over time.”¹² A similar reform was suggested directly to members of the Committee on Homeland Security and Governmental Affairs’s Subcommittee on Regulatory Affairs and Federal Management by Michael Greenstone, a former advisor to President Obama, who also emphasized the need for an enforcement mechanism to encourage agency compliance.¹³ This suggested reform would require agencies to announce a timetable for review of a regulation, pre-specify expected benefits and costs and identify how these benefits and costs would be measured, such as the types of data and other information that it anticipates being necessary for review.¹⁴ Mr. Greenstone further suggested that these efforts would be strengthened if they were accompanied by a triggering mechanism, such as public announcement of deadlines for review as well as judicial action to compel reviews and rulemaking.¹⁵

A former Administrator of OIRA summed up the centrality of retrospective review to the larger project of regulatory improvement and reform:

When agencies issue rules, they have to speculate about benefits and costs. After rules are in place, they should test those speculations, and they should use what they learn when revisiting a regulation or issuing a new one. This is a central point for the future of regulatory reform. Indeed, it is one of the most important steps imaginable, not least because it can reduce cumulative burdens and promote the goal of simplification.¹⁶

To better understand the current state of agency implementation of the Administration’s retrospective review priorities, the Com-

⁹ Joseph Aldy, *Learning from Experience: An Assessment of the Retrospective Reviews of Agency Rules and the Evidence for Improving the Design and Implementation of Regulatory Policy*, 62 ADMIN. CONFERENCE OF THE U.S. (Nov. 17, 2014).

¹⁰ Jerry Ellig and Rosemarie Fike, *Regulatory Process, Regulatory Reform, and the Quality of Regulatory Impact Analysis*, Working Paper No. 13–13, MERCATUS CTR. AT GEORGE MASON UNIV. (2013) (Reports the results of an empirical inquiry which indicates that requirements for agency review of a rule is “associated with higher-quality analysis” and even “relatively weak requirements in some existing laws are correlated with better analysis of prospective regulations.”).

¹¹ Am. Bar Assoc. Section on Admin. Law & Reg. Practice, 106B, Resolution by the House of Delegates (Feb. 8, 2016).

¹² *Id.*

¹³ *Examining Practical Solutions to Improve the Federal Regulatory Process: Roundtable Before the S. Homeland Sec. & Governmental Affairs Subcomm. on Regulatory Affairs & Fed. Mgmt.*, 114th Cong. (2015) (statement of Michael Greenstone).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Cass R. Sunstein, *The Regulatory Lookback*, 94 B.U.L. REV. 579, 591 (2014).

mittee held a hearing and conducted briefings with agency officials directly involved in regulatory retrospective review efforts at five agencies: the Departments of Agriculture (USDA), Interior (DOI), Labor, the Environmental Protection Agency, and the Pension Benefit Guaranty Corporation.¹⁷ It was clear from those briefings and agency progress reports that their efforts had resulted in few completed reviews since the 2011 executive orders and that better data and more planning would allow agencies to conduct better reviews.¹⁸ Some agencies reported that their efforts had resulted in few completed reviews, and, for the most part, agency officials attributed this record to competing priorities and internal resource constraints.¹⁹ DOI officials expressed concern about the resources required to conduct benefit-cost analysis as part of retrospective reviews and stated that necessary data to conduct these types of analysis is not always available.²⁰ Additionally, officials conceded that they have not acted in response to OMB directions to include plans for retrospective review in new rules.²¹ USDA staff noted that planning for retrospective reviews as they draft new regulations is “evolving” and that regulatory analytical capacity within each USDA agency varies.²²

By going beyond the directives of an executive order, and requiring in statute that a prospective plan for retrospective review be “built in” to the most significant and costly regulations, this legislation addresses key deficiencies in the current approach. First, it requires agencies to commit to a timeline for that review, rather than prolonging a review plan due to competing priorities. Secondly, it furnishes agencies with the data they need to conduct a thorough assessment of the efficacy of the rule. Above all, it establishes meaningful retrospective review as not merely a preference among many, but indeed a requirement that agencies will need to comply with by law.

In a recent hearing before the Committee’s Subcommittee on Regulatory Affairs and Federal Management, the current OIRA Administrator, discussing the importance of retrospective review efforts, stated that “accountability is one of the really important things in any regulatory system and I think asking an agency to account for how its rule has actually operated, and whether it’s achieving its goals is an important objective.”²³ S. 1817 will promote a culture of accountability via retrospective review that will influence every stage of the rulemaking process and result in more efficient and effective rules.

¹⁷*Agency Progress in Retrospective Review of Existing Regulations: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs Subcomm. on Regulatory Affairs & Fed. Mgmt.*, 114th Cong. (2015); Briefing from the Department of Interior to Subcomm. staff (July 17, 2015); Briefing from the Department of Agriculture to Subcomm. staff (July 30, 2015); Briefing from the Environmental Protection Agency to Subcomm. Staff (July 15, 2015); and Briefing from the Pension Benefit Guaranty Corporation to Subcomm. staff (July 7, 2015).

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Reviewing the Office of Information and Regulatory Affairs’ Role in the Regulatory Process: Hearing Before the S. Comm. on Homeland Sec. & Governmental Affairs Subcomm. on Regulatory Affairs & Fed. Mgmt.*, 21, 114th Cong. (2015) (statement of Hon. Howard Shelanski).

III. LEGISLATIVE HISTORY

Senator Heidi Heitkamp (D–ND) introduced S. 1817 on July 21, 2015 with Senator James Lankford (R–OK). The bill was referred to the Committee on Homeland Security and Governmental Affairs. Senators Kelly Ayotte (R–NH), Mark Warner (D–VA), and Joni Ernst (R–IA) later joined as co-sponsors of the bill. The Committee considered S. 1817 at an October 7, 2015 business meeting.

During the business meeting, Senator Heitkamp offered a substitute amendment with clarifying language including allowing flexibility in the methodology used to assess a covered regulation, exemption by the Administrator of OIRA of subsequent assessments in certain circumstances, exemption from and extension of deadlines for the overall framework for certain rules, additional language on applicability, and language outlining the scope of judicial review. The substitute amendment was adopted by voice vote with Senators Johnson, Portman, Lankford, Enzi, Ernst, Sasse, Carper, McCaskill, Baldwin, Heitkamp, and Booker present.

The Committee ordered S. 1817, as amended, reported favorably on October 7, 2015, by voice vote with Senators Johnson, Portman, Lankford, Enzi, Ernst, Sasse, Carper, McCaskill, Baldwin, Heitkamp, and Booker present.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section provides the bill’s short title, the “Smarter Regulations Through Advance Planning and Review Act of 2015” or the “Smarter Regs Act of 2015.”

Section 2. Incorporating retrospective review into new major rules

Subsection (a)(1) adds to Federal law definitions of the terms “Administrator” (as the Administrator of OIRA) and “major rule” (as any rule that the OIRA Administrator determines is likely to impose annual economic effects of \$100,000,000 or more, or cause similar deleterious economic effects).

Subsection (a)(2) adds a new subsection 553(f) to Federal law on major rule frameworks. Subparagraph (f)(1) describes the “framework for assessing the major rule” required for both proposed and final major rules. For a final major rule, this framework includes a clear statement of regulatory intent, summary of costs and benefits, intended methodology and metrics to use in assessment, plan for data collection, and a timeframe of less than ten years for conducting the assessment.

New subparagraph (f)(2) outlines the assessment agencies must conduct in service of retrospective review. Subparagraph (f)(2)(A) stipulates that the agency will use the data collected and the methodology it included in the rule framework to determine whether the major rule “is accomplishing its regulatory objective,” “has been rendered unnecessary,” “needs to be strengthened,” or otherwise modified to “better achieve the regulatory objective while imposing a smaller burden.” Subparagraph (f)(2)(A) does not require a new regulatory Cost-Benefit Analysis as would be done at the proposed or final rule stage, but does require agencies to analyze how “actual benefits and costs of the major rule may have varied from those anticipated.” Subparagraph (f)(2)(B) provides a procedure whereby an

agency can use a different methodology than that outlined in the major rule framework. Subparagraph (f)(2)(C) describes the requirements for subsequent reassessments for rules the agency determines should remain in effect. This includes the authority of the Administrator of OIRA to exempt certain rules from these requirements. Subparagraph (f)(2)(D) requires that the agency publish the results of a major rule assessment, including the time frame for subsequent assessment, in the Federal Register within 180 days.

A new subparagraph (f)(3) delineates required oversight by the Administrator of OIRA, including issuing guidance to agencies, overseeing timely compliance (including publication online and in the Federal Register), providing assistance in streamlining of major rule assessments, issuing exemptions for rules that did not require a notice of proposed rulemaking or that involve an emergency situation, or issuing an extension of requirement deadlines in response to sufficient agency justification.

A new subparagraph (f)(4) clarifies that this subsection does not limit an agency's authority to "assess or modify" a major rule ahead of the specified time frame.

A new subparagraph (f)(5) clarifies that the bill does not apply to major rules reviewed by the Administrator of OIRA prior to the bill's date of enactment or to agencies with existing retrospective review requirements that meet or exceed those in this act. It also does not apply to interpretative rules, statements of policy, rules of agency procedure, and administrative rules. This subparagraph also states that for major rules "for which an agency is not required to issue a notice of proposed rule making in response to an emergency or . . . deadline, the agency shall publish the" required framework within six months.

A new subparagraph (f)(6) describes the scope for judicial review, which includes "whether an agency published the framework for assessment" or "whether an agency completed" the required assessment. The reviewing court may remand the rule to the agency to comply with the framework established for assessment or the requirement for the assessment itself. Notwithstanding a court order, the rule under review will take effect. The decisions and actions of the Administrator of OIRA will not be subject to review.

Subsection 2(b) authorizes "to be appropriated such sums as may be necessary to carry out the amendments made by subsection (a).

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JUNE 13, 2016.

Hon. RON JOHNSON,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1817, the Smarter Regs Act of 2015.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

KEITH HALL.

Enclosure.

S. 1817—Smarter Regs Act of 2015

S. 1817 would require agencies to conduct retrospective reviews of major rules they issue beginning 180 days after enactment of the bill. Under the bill, major rules would include all regulations that are likely to result in an annual effect on the economy of \$100 million or more; a major increase in prices or costs for consumers, industry, government agencies or individual regions; or a significant impact on U.S. companies that compete with foreign companies.

CBO estimates that implementing S. 1817 would have no significant cost over the next five years. Most of the provisions of the bill would codify and expand on a number of Executive Orders, most recently Executive Order 13563 which set the framework for agencies to review existing regulations. According to information from the Office of Management and Budget, agencies are already responsible for reviewing regulations. CBO expects that under S. 1817 there could be some change in the methods used to review new regulations, but we estimate there would be no significant effect on spending.

The bill could affect direct spending by agencies not funded through annual appropriations; therefore pay-as-you-go procedures apply. CBO estimates, however, that any net increase in spending by those agencies would be negligible. Enacting S. 1817 would not affect revenues.

CBO estimates that enacting S. 1817 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

S. 1817 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by S. 1817 as reported are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

* * * * *

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

* * * * *

PART I—THE AGENCIES GENERALLY

* * * * *

CHAPTER 5—ADMINISTRATIVE PROCEDURE

* * * * *

Subchapter II—Administrative Procedure

* * * * *

SEC. 551. DEFINITIONS.

(1) * * *

* * * * *

(13) "agency action" includes the whole or a part of an agency rule, order, license, sanction, relief, or the equivalent or denial thereof, or failure to act[; and];

(14) "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports on any matter or proceeding covered by this subchapter[.];

(15) "Administrator" means the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget; and

(16) "major rule" means any rule that the Administrator finds has resulted in or is likely to result in—

(A) an annual effect on the economy of \$100,000,000 or more;

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

(C) significant adverse effect 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.

* * * * *

SEC. 553. RULE MAKING.

(a) * * *

* * * * *

(f) MAJOR RULE FRAMEWORKS.—

(1) IN GENERAL.—Beginning 180 days after the date of enactment of this subsection, when an agency publishes in the Federal Register—

(A) a proposed major rule, the agency shall include a potential framework for assessing the major, which shall include a general statement of how the agency intends to measure the effectiveness of the major rule; or

(B) a final major rule, the agency shall include a framework for assessing the major rule under paragraph (2), which shall include—

(i) a clear statement of the regulatory objectives of the major rule, including a summary of the societal benefit and cost of the major rule;

(ii) the methodology by which the agency plans to analyze the major rule, including metrics by which the agency can measure—

(I) the effectiveness and benefits of the major rule in producing the regulatory objectives of the major rule; and

(II) the impacts, including any costs, of the major rule on regulated and other impacted entities;

(iii) a plan for gathering data regarding the metrics described in clause (ii) on an ongoing basis, or at periodic times, including a method by which the agency will invite the public to participate in the review process and seek input from other agencies; and

(iv) a specific time frame, as appropriate to the major rule and not more than 10 years after the effective date of the major, under which the agency shall conduct the assessment of the major rule in accordance with paragraph (2)(A).

(2) ASSESSMENT.—

(A) IN GENERAL.—Each agency shall assess the data collected under paragraph (1)(B)(iii), using the methodology set forth in paragraph (1)(B)(ii) or any other appropriate methodology developed after the issuance of a final major rule to better determine whether the regulatory objective was achieved, with respect to a major rule—

(i) to analyze how the actual benefits and costs of the major rule may have varied from those anticipated at the time the major rule was issued; and

(ii) to determine whether—

(I) the major rule is accomplishing its regulatory objective;

(II) the major rule has been rendered unnecessary, taking into consideration—

(aa) changes in the subject area affected by the major rule; and

(bb) whether the major rule overlaps, duplicates, or conflicts with other rules or, to the extent feasible, State and local government regulations;

(III) the major rule needs to be strengthened in order to accomplish the regulatory objective; and

(IV) other alternatives to the major rule or modification of the major rule could better achieve the regulatory objective while imposing a smaller bur-

den on society or increase net benefits, taking into consideration any cost already incurred.

(B) *DIFFERENT METHODOLOGY.*—If an agency uses a methodology other than the methodology set forth in paragraph (1)(B)(ii) to assess data under subparagraph (A), the agency shall include as part of the notice required under subparagraph (D) an explanation of the changes in circumstances that necessitated the use of that other methodology.

(C) *SUBSEQUENT ASSESSMENTS.*—

(i) *IN GENERAL.*—Except as provided in clause (ii), if, after an assessment of a major rule under subparagraph (A), an agency determines that the major rule will remain in effect with or without modification, the agency shall—

(I) determine a specific time frame, as appropriate to the major rule and not more than 10 years after the effective date of the major rule, under which the agency shall conduct another assessment of the major rule in accordance with subparagraph (A); and

(II) if the assessment conducted under subclause (I) does not result in a repeal of the major rule, periodically assess the major rule in accordance with subparagraph (A) to ensure the major rule continues to meet the regulatory objective.

(ii) *EXEMPTION.*—The Administrator may exempt an agency from conducting a subsequent assessment of a major rule under clause (i) if the Administrator determines that there is a foreseeable and apparent need for the major rule beyond the time frame required under clause (i)(I).

(D) *PUBLICATION.*—Not later than 180 days after the date on which an agency completes an assessment of a major rule under subparagraph (A), the agency shall publish a notice of availability of the results of the assessment of the major rule under subparagraph (C)(i), if applicable.

(3) *OMB OVERSIGHT.*—The Administrator shall—

(A) issue guidance for agencies regarding the development of the framework under paragraph (1) and the conduct of the assessments under paragraph (2)(A);

(B) oversee the timely compliance of agencies with this subsection;

(C) ensure that the results of each assessment conducted under paragraph (2)(A) are—

(i) published promptly on a centralized Federal website; and

(ii) noticed in the Federal Register in accordance with paragraph (2)(D);

(D) encourage and assist agencies to streamline and coordinate the assessment of major rules with similar or related regulatory objectives;

(E) exempt an agency from including the framework required under paragraph (1)(B) when publishing a final major rule, if the agency did not issue a notice of proposed

rule making for the major rule in order to provide a timely response to an emergency or comply with a statutorily imposed deadline, in accordance with paragraph (5)(B); and (F) extend the deadline specified by an agency for an assessment of a major rule under paragraph (1)(B)(iv) or paragraph (2)(C)(i)(I) for a period of not more than 90 days if the agency justifies why the agency is unable to complete the assessment by that deadline.

(4) **RULE OF CONSTRUCTION.**—Nothing in this subsection shall be construed to affect—

(A) the authority of an agency to assess or modify a major rule of the agency earlier than the end of the time frame specified for the major rule under paragraph (1)(B)(iv); or

(B) any other provision of law that requires an agency to conduct retrospective reviews of rules issued by the agency.

(5) **APPLICABILITY.**—

(A) **IN GENERAL.**—This subsection shall not apply to—

(i) a major rule of an agency—

(I) that the Administrator reviewed before the date of enactment of this subsection; or

(II) for which the agency is required to conduct a retrospective review under any other provision of law that meets or exceeds the requirements of this subsection, as determined by the Administrator;

(ii) interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or

(iii) routine and administrative rules.

(B) **DIRECT AND INTERIM FINAL MAJOR RULE.**—In the case of a major rule of an agency for which the agency is not required to issue a notice of proposed rule making in response to an emergency or a statutorily imposed deadline, the agency shall publish the framework required under paragraph (1)(B) in the Federal Register not later than 6 months after the date on which the agency publishes the final major rule.

(6) **JUDICIAL REVIEW.**—

(A) **IN GENERAL.**—Judicial review of agency compliance with this subsection is limited to—

(i) whether an agency published the framework for assessment of a major rule in accordance with paragraph (1); or

(ii) whether an agency completed and published the required assessment of a major rule in accordance with subparagraphs (A) and (D) of paragraph (2).

(B) **REMEDY AVAILABLE.**—In granting relief in an action brought under subparagraph (A), the court may only issue an order remanding the major rule to the agency to comply with paragraph (1) or subparagraph (A) and (D) of paragraph (2), as applicable.

(C) **EFFECTIVE DATE OF MAJOR RULE.**—If, in an action brought under subparagraph (A)(i), a court determines that the agency did not comply, the major rule shall take effect notwithstanding any order issued by the court.

(D) ADMINISTRATOR.—Any determination, action, or inaction of the Administrator shall not be subject to judicial review.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the amendments made by subsection (a).

