

# ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT OF 2014

FEBRUARY 21, 2014.—Committed to the Committee of the Whole House on the State of the Union; and ordered to be printed

Mr. ISSA, from the Committee on Oversight and Government Reform, submitted the following

## R E P O R T

together with

## MINORITY VIEWS

[To accompany H.R. 2804]

[Including cost estimate of the Congressional Budget Office]

The Committee on Oversight and Government Reform, to whom was referred the bill (H.R. 2804) to amend title 5, United States Code, to require the Administrator of the Office of Information and Regulatory Affairs to publish information about rules on the Internet, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “All Economic Regulations are Transparent Act of 2014” or the “ALERT Act of 2014”.

**SEC. 2. OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATION OF INFORMATION RELATING TO RULES.**

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

**“CHAPTER 6A—OFFICE OF INFORMATION AND REGULATORY AFFAIRS  
PUBLICATION OF INFORMATION RELATING TO 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.

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

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

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

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

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

“(i) any statutory or judicial deadline; and

“(ii) whether the legal basis restricts or precludes the agency from conducting an analysis of the costs or benefits of the rule during the rule making, and if not, whether the agency plans to conduct an analysis of the costs or benefits of the rule during the rule making.

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

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

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

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

“(A) an approximate schedule for completing action on the rule;

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

“(i) less than \$50,000,000;

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

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

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

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

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

“(vii) \$10,000,000,000 or more; and

“(C) any estimate of the economic effects of the rule, including any estimate of the net effect that the rule will have on the number of jobs in the United States, that was considered in drafting the rule. If such estimate is not available, a statement affirming that no information on the economic effects, including the effect on the number of jobs, of the rule has been considered.

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

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

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

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

“(A) The information that the Administrator received from the head of each agency under section 651.

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

“(i) that was proposed by each agency, including, for each such rule, an indication of whether the issuing agency conducted an analysis of the costs or benefits of the rule; and

“(ii) that was finalized by each agency, including for each such rule an indication of whether—

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

“(II) the agency claimed an exemption from the procedures under section 553 pursuant to section 553(b)(B); and

“(III) the rule was issued pursuant to a statutory mandate or the rule making is committed to agency discretion by law.

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

“(i) repealed a rule;

“(ii) reduced the scope of a rule;

“(iii) reduced the cost of a rule; or

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

“(D) The total cost (without reducing the cost by any offsetting benefits) of all rules proposed or finalized, and the number of rules for which an estimate of the cost of the rule was not available.

“(2) PUBLICATION ON THE INTERNET.—Not later than October 1 of each year, the Administrator shall make publicly available on the Internet the following:

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

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

“(C) The number of rules and a list of each such rule reviewed by the Director of the Office of Management and Budget for the previous year, and the authority under which each such review was conducted.

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

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

“(F) The number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House of Representatives or the Senate under section 802.

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

“(a) IN GENERAL.—Subject to subsection (b), a rule may not take effect until the information required to be made publicly available on the Internet regarding such rule pursuant to section 652(a) has been so available for not less than 6 months.

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

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

“(2) which the President determines by Executive Order should take effect because the rule is—

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

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

“(C) necessary for national security; or

“(D) issued pursuant to any statute implementing an international trade agreement.

#### “§ 654. Definitions

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

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

“6. The Analysis of Regulatory Functions ..... 601

“6A. Office of Information and Regulatory Affairs Publication of Information Relating to Rules ..... 651”.

## (c) EFFECTIVE DATES.—

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

## (2) CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING.—

(A) IN GENERAL.—Subsection (b) of section 652 of title 5, United States Code, as added by subsection (a), shall take effect on the date that is 60 days after the date of the enactment of this Act.

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

(C) FIRST PUBLICATION.—The requirement under section 652(b)(2)(A) of title 5, United States Code, as added by subsection (a), shall include for the first publication, any analysis of the costs or benefits conducted for a proposed or final rule, for the 10 years before the date of the enactment of this Act.

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

## COMMITTEE STATEMENT AND VIEWS

## PURPOSE AND SUMMARY

Even as federal regulatory activity proliferates, transparency of the regulatory process is diminishing. Regulatory transparency is essential for public participation. To enhance transparency and public participation in the regulatory process, H.R. 2804, the ALERT Act of 2014, requires that the public be apprised in a timelier manner about upcoming rulemaking activity.

The ALERT Act requires agencies to submit monthly regulatory updates to the Office of Information and Regulatory Affairs (OIRA), which will be required to make publicly available on the Internet, for all rules expected to be proposed or released in the upcoming year. The updates will include a summary, the objective of each rule, its legal basis, and other information. If a notice of proposed rulemaking has been issued for a rule, the update must include a schedule for completing the rulemaking, an estimate of the cost, and the economic effects considered. A rule must be noticed for at least six months before it can become effective.

The bill requires OIRA to publish each October 1st two annual cumulative assessments of agency rulemaking. One assessment, to be published in the Federal Register, provides information about regulatory activity of the past year, including the number of rules issued, any deregulatory actions, and information received in the monthly updates. The other assessment, to be published on the Internet provides information about the regulatory review process during the past year, including cost-benefit analyses, the number of OIRA reviews, and rules submitted to the Government Accountability Office under the Congressional Review Act.

## BACKGROUND AND NEED FOR LEGISLATION

In recent years, regulatory transparency has diminished, giving the public less time to prepare for the opportunity to participate in the regulatory process and less time to prepare for the impact of the regulation itself. Currently, the primary regulatory trans-

parency tools are the government-wide semi-annual Unified Agenda of Regulatory and Deregulatory Actions and annual agency Regulatory Plans, both required under Executive Order 12866.<sup>1</sup> These tools are intended to provide notice and transparency into both near term and long term anticipated regulatory activity.

However, the current Administration has failed to issue these publications on time and, in one case, completely failed to issue the publication. Traditionally the Unified Agenda has been issued in April and October of each year and the Executive Order requires that the Regulatory Plans be issued with the October agenda.<sup>2</sup> The Administration never issued the Spring 2012 Unified Agenda and the Fall 2012 edition was issued in late December.<sup>3</sup> In 2013, the Spring Unified Agenda was issued in July and the Fall Unified Agenda was issued in late November, but it was not published in the Federal Register until January 2014.<sup>4</sup>

Additionally, OIRA Administrators under the current Administration have actively sought to shrink the scope of the Unified Agenda.<sup>5</sup> The Executive Order requires agencies to provide information for the Unified Agenda for “all regulations under development or review.”<sup>6</sup> However, in June 2012, OIRA Administrator Cass Sunstein issued a memorandum encouraging agencies to reduce the number of rules included on the agenda, by removing rules that are listed as long term or rules that are not expected to move forward within the next year.<sup>7</sup> In 2013, Administrator Howard Shelanski issued a substantially similar memorandum.<sup>8</sup>

The ALERT Act will modernize and expand the regulatory transparency tools available to the public by requiring agencies to make monthly updates for rules that are anticipated to be proposed or finalized within the upcoming year. The ALERT Act also creates a statutory deadline for OIRA to submit information to the public about the rulemaking process and regulatory effects from rules issued and proposed during the past year. The regulatory transparency tools in the ALERT Act will create greater certainty about anticipated regulatory action and the effects of such action on the public.

<sup>1</sup>Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993).

<sup>2</sup>See Exec. Order No. 12291, Federal Regulation, 3 C.F.R. 127 (Feb. 17, 1981), and Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993).

<sup>3</sup>See Leland E. Beck, *OMB Releases Fall 2012 Unified Agenda & Regulatory Plan: Meaning What?*, Federal Regulations Advisor (Dec. 22, 2012), <http://www.fedregsadvisor.com/2012/12/22/omb-releases-fall-2012-unified-agenda-regulatory-plan-meaning-what/>.

<sup>4</sup>See Sofie Miller, *New Regulatory Agenda Lists Thousands of New Rules*, Reg. Studies Center GWU (July 10, 2013) available at: [http://research.columbian.gwu.edu/regulatorystudies/sites/default/files/u41/20130710\\_spring2013unifiedagenda.pdf](http://research.columbian.gwu.edu/regulatorystudies/sites/default/files/u41/20130710_spring2013unifiedagenda.pdf), Leland E. Beck, *Fall 2013 Unified Agenda Published: Something New, Something Old*, Federal Regulations Advisor (Nov. 27, 2013), <http://www.fedregsadvisor.com/2013/11/27/fall-2013-unified-agenda-published-something-new-something-old/>, and Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions, 79 Fed. Reg. 895 (Jan. 7, 2014).

<sup>5</sup>Clyde Wayne Crews, *Big Sexy Holiday Fun with the Unified Agenda of Federal Regulations*, Forbes (Dec. 2, 2013) available at: <http://www.forbes.com/sites/waynecrews/2013/12/02/big-sexy-holiday-fun-with-the-unified-agenda-of-federal-regulations/>.

<sup>6</sup>Exec. Order No. 12866, Regulatory Planning and Review, 58 Fed. Reg. 51735 (Sept. 30, 1993).

<sup>7</sup>Memorandum from OIRA Admin. Cass Sunstein “Fall 2012 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Jun. 13, 2012).

<sup>8</sup>Memorandum from OIRA Admin. Howard Shelanski “Fall 2013 Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions” (Aug. 7, 2013).

## LEGISLATIVE HISTORY

The ALERT Act was introduced by Representative George Holding on July 24, 2013. The bill was referred to the House Committee on Oversight and Government Reform and the House Committee on the Judiciary. At the Oversight Committee, H.R. 2804 was considered during a business meeting on February 11, 2014. After amending the ALERT Act, the Committee favorably reported it to the full House by roll call vote of 19–15.

## SECTION-BY-SECTION

*Section 1: Short title*

States that this Act may be cited as the “All Economic Regulations are Transparent Act of 2014,” or the “ALERT Act of 2014.”

*Section 2: Office of Information and Regulatory Affairs publication of information relating to rules**Subsection (a). Amendment*

Amends Title 5 of the United States Code by inserting “Chapter 6A—OIRA Publication of Information Relating to Rules,” which includes the following sections:

*Section 651. Agency monthly submission to OIRA*

Requires agency heads to submit a monthly update to the Administrator of the Office of Information and Regulatory Affairs (OIRA) that includes each rule the agency expects to propose or finalize in the upcoming year. The monthly updates, for each rule, include: a summary, objectives, legal basis, whether comments will be requested on the proposed rule, the stage of the rulemaking process, and whether the rule is subject to a regulatory review under 5 U.S.C. 610. If a notice of proposed rulemaking has been issued for a rule, the agency must also include a schedule for completion, an estimate of the cost and any information.

*Section 652. OIRA Publications*

Requires the Administrator to make the monthly updates publicly available on the Internet.

Requires the Administrator to publish an annual cumulative assessment of agency rulemaking in the Federal Register. The following information will be included: information received in the monthly submissions, cost and benefit analyses of rules, agency action that reduced the scope of the regulatory state, the total costs of rules, and the total number of rules for which a cost estimate was unavailable.

Requires the OIRA Administrator to make publicly available on the Internet on an annual basis certain information about the review and analysis of each proposed or finalized rule. The following information will be included: cost and benefits analyses, docket numbers, regulatory identifier number, the number and a list of rules reviewed by OIRA, and the number and list of rules covered under the Congressional Review Act. The first publication will require the cost and benefit analyses for all proposed and final rules in the past 10 years.

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

Provides that a rule may not take effect until the monthly submission to OIRA has been publicly available on the Internet for not less than 6 months. The 6-month requirement does not apply to rules that do not require notice and public comment and rules the President issues an Executive Order declaring necessary.

*Section 654. Definitions*

Defines agency, agency action, rule and rule making as having the meaning given those terms in 5 U.S.C. 551.

*Subsection (b). Technical and conforming amendment*

This subsection amends the table of chapters for part I of title 5 of the U.S.C.

*Subsection (c). Effective dates*

This subsection establishes effective dates for the monthly updates and OIRA publications, and provides that the 6 month requirement not take effect until 8 months after enactment.

EXPLANATION OF AMENDMENTS

Representative Doug Collins offered an amendment in the nature of a substitute which made technical corrections to the legislation. The amendment clarified that the six-month notice requirement would go into effect six months after OIRA was required to first post the information on the Internet. The amendment also clarified that the annual cumulative assessments are required to be published on October 1 of each year. The amendment, as amended, was agreed to by a roll call vote of 19 yeas to 15 nays.

Representative Rob Woodall offered an amendment to the Collins amendment in the nature of a substitute that added a requirement to the agency monthly updates. Agencies must include, for each rule that has had a notice of proposed rulemaking issued, an estimate of the economic effects of the rule, including the effect on jobs, or make an affirmative statement that no economic information was considered. The amendment was agreed to by a voice vote.

COMMITTEE CONSIDERATION

On February 11, 2014, the Committee met in open session and ordered reported favorably the bill, H.R. 2804, as amended, by roll call vote of 19 yeas to 15 nays, a quorum being present.

ROLL CALL VOTES

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

113TH CONGRESS—RATIO (23—18)

ROLL CALL

Meeting on: H.R. 2804, ALERT Act of 2013 Date: 2/11/14

*Vote on: Collins ANS Vote # 1*

Republicans	Yea	Nay	Present	Democrats	Yea	Nay	Present
Mr. Issa (CA) (Chairman) .....	X	.....	.....	Mr. Cummings (MD) (Ranking)	.....	.....	.....

Republicans	Yea	Nay	Present	Democrats	Yea	Nay	Present
Mr. Mica (FL) .....	X			Mrs. Maloney (NY) .....			
Mr. Turner (OH) .....	X			Ms. Norton (DC) .....			
Mr. Duncan (TN) .....				Mr. Tierney (MA) .....			
Mr. McHenry (NC) .....	X			Mr. Clay (MO) .....			
Mr. Jordan (OH) .....	X			Mr. Lynch (MA) .....			
Mr. Chaffetz (UT) .....	X			Mr. Cooper (TN) .....			
Mr. Walberg (MI) .....	X			Mr. Connolly (VA) .....			
Mr. Lankford (OK) .....	X			Ms. Speier (CA) .....			
Mr. Amash (MI) .....	X			Mr. Cartwright (PA) .....			
Mr. Gosar (AZ) .....				Ms. Duckworth (IL) .....			
Mr. Meehan (PA) .....				Ms. Kelly (IL) .....			
Mr. DesJarlais (TN) .....	X			Mr. Davis (IL) .....			
Mr. Gowdy (SC) .....	X			Mr. Welch (VT) .....			
Mr. Farenthold (TX) .....	X			Mr. Cardenas (CA) .....			
Mr. Hastings (WA) .....	X			Mr. Horsford (NV) .....			
Mrs. Lummis (WY) .....	X			Ms. Lujan Grisham (NM) .....			
Mr. Woodall (GA) .....							
Mr. Massie (KY) .....	X						
Mr. Collins (GA) .....	X						
Mr. Meadows (NC) .....	X						
Mr. Bentivolio (MI) .....	X						
Mr. DeSantis (FL) .....							

Roll Call Totals: Yeas 19; Nays 15. Passed.

[Quorum to bring up bill = 14; Quorum to report bill = 21].

#### COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

113TH CONGRESS—RATIO (23–18)

#### ROLLCALL

Meeting on: H.R. 2804, ALERT Act of 2013 Date: 2/11/14

*Vote on: Report Favorably to the House, as amended Vote # 2*

Republicans	Yea	Nay	Present	Democrats	Yea	Nay	Present
Mr. Issa (CA) (Chairman) .....	X			Mr. Cummings (MD) (Ranking) .....			
Mr. Mica (FL) .....	X			Mrs. Maloney (NY) .....			
Mr. Turner (OH) .....	X			Ms. Norton (DC) .....			
Mr. Duncan (TN) .....				Mr. Tierney (MA) .....			
Mr. McHenry (NC) .....	X			Mr. Clay (MO) .....			
Mr. Jordan (OH) .....	X			Mr. Lynch (MA) .....			
Mr. Chaffetz (UT) .....	X			Mr. Cooper (TN) .....			
Mr. Walberg (MI) .....	X			Mr. Connolly (VA) .....			
Mr. Lankford (OK) .....	X			Ms. Speier (CA) .....			
Mr. Amash (MI) .....	X			Mr. Cartwright (PA) .....			
Mr. Gosar (AZ) .....				Ms. Duckworth (IL) .....			
Mr. Meehan (PA) .....				Ms. Kelly (IL) .....			
Mr. DesJarlais (TN) .....	X			Mr. Davis (IL) .....			
Mr. Gowdy (SC) .....	X			Mr. Welch (VT) .....			
Mr. Farenthold (TX) .....	X			Mr. Cardenas (CA) .....			
Mr. Hastings (WA) .....	X			Mr. Horsford (NV) .....			
Mrs. Lummis (WY) .....	X			Ms. Lujan Grisham (NM) .....			
Mr. Woodall (GA) .....							
Mr. Massie (KY) .....	X						
Mr. Collins (GA) .....	X						
Mr. Meadows (NC) .....	X						
Mr. Bentivolio (MI) .....	X						
Mr. DeSantis (FL) .....							

Roll Call Totals: Yeas 19; Nays 15. Passed.

[Quorum to bring up bill = 14; Quorum to report bill = 21].



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February 18, 2014

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The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Government Reform  
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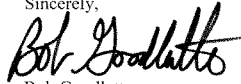
Dear Chairman Issa,

I am writing concerning H.R. 2804, the "ALERT Act of 2013," on which your Committee received the primary referral.

As you know, the Committee on the Judiciary was given an additional referral on this measure upon introduction. As a result of your having consulted with the Judiciary Committee concerning provisions of the bill that fall within our Rule X jurisdiction, I to agree to discharge the Committee on the Judiciary from further consideration of H.R. 2804. The Judiciary Committee takes this action with our mutual understanding that, by foregoing consideration of H.R. 2804 at this time, we do not waive any jurisdiction over the subject matter contained in this or similar legislation, and that our committee will be appropriately consulted and involved as the bill or similar legislation moves forward. Our committee also reserves the right to seek appointment of an appropriate number of conferees to any House-Senate conference involving this or similar legislation, and requests your support for any such request.

I would appreciate your response to this letter confirming this understanding, and would request that you include a copy of this letter and your response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you in advance for your cooperation.

Sincerely,



Bob Goodlatte  
Chairman

cc: The Honorable John Boehner, Speaker  
The Honorable John Conyers  
The Honorable Elijah Cummings  
The Honorable Thomas J. Wickham, Jr., Parliamentarian

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ROBIN L. KELLY, ILLINOIS  
DANNY K. DAVIS, ILLINOIS  
PETER WELCH, VERMONT  
TONY CARDENAS, CALIFORNIA  
STEVEN A. HORSFORD, NEVADA  
MICHELLE LIZJAN GONZALEZ, NEW MEXICO

February 18, 2014

The Honorable Bob Goodlatte  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, D.C. 20515

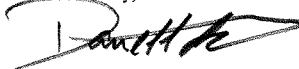
Dear Mr. Chairman:

Thank you for your letter regarding the Committee on the Judiciary's jurisdictional interest in H.R. 2804, the "All Economic Regulations are Transparent Act," and your willingness to forego consideration of H.R. 2804 by your committee.

I agree that the Committee on the Judiciary has a valid jurisdictional interest in certain provisions of H.R. 2804 and that the Committee's jurisdiction will not be adversely affected by your decision to forego consideration of H.R. 2804. As you have requested, I will support your request for an appropriate appointment of outside conferees from your Committee in the event of a House-Senate conference on this or similar legislation should such a conference be convened.

Finally, I will include a copy of your letter and this response in the Committee Report and in the *Congressional Record* during the floor consideration of this bill. Thank you again for your cooperation.

Sincerely,



Darrell Issa  
Chairman

cc: The Honorable John Boehner, Speaker of the House

The Honorable Elijah Cummings, Ranking Minority Member

The Honorable John Conyers, Jr., Ranking Minority Member  
Committee on the Judiciary

Mr. Tom Wickham, Parliamentarian

## APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires OIRA to publish each October 1st two annual cumulative assessments of agency rulemaking. As such this bill does not relate to employment or access to public services and accommodations.

## STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

## STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

## DUPLICATION OF FEDERAL PROGRAMS

No provision of H.R. 2804 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

## DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that enacting H.R. 2804 does not direct the completion of any specific rule makings within the meaning of 5 U.S.C. 551.

## FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

## UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandates Reform Act, P.L. 104–4) requires a statement as to whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

## EARMARK IDENTIFICATION

H.R. 2804 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 2804. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST  
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 2804 from the Director of Congressional Budget Office:

FEBRUARY 20, 2014.

Hon. DARRELL ISSA,  
*Chairman, Committee on Oversight and Government Reform,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2804, the ALERT Act of 2014.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*H.R. 2804—ALERT Act of 2014*

H.R. 2804 would require federal agencies to provide to the public information regarding proposed and final regulations. The bill would require federal agencies to submit information for a monthly supplement to the Unified Agenda of Federal Regulatory and De-regulatory Actions (a semiannual compilation of the federal regulations under development). The Office of Information and Regulatory Affairs (OIRA) would be required to post that information on the Internet on a monthly and annual basis. With certain exceptions, regulations would not be effective until six months after they have appeared in the proposed monthly report.

CBO estimates that preparing the monthly supplemental reports for 3,000 to 4,000 final regulations each year would cost less than a million dollars a year, subject to the availability of appropriated funds, over the 2014–2018 period. Because agencies routinely monitor the status of regulations that are being processed, this additional reporting requirement would not add a significant administrative burden. Based on information from the Congressional Research Service about the current regulatory process, CBO expects that the requirements in H.R. 2804 would not significantly delay the implementation of final regulations. The legislation 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 not be significant. Enacting the bill would not affect revenues.

H.R. 2804 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

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

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### TITLE 5, UNITED STATES CODE

\* \* \* \* \*

#### PART I—THE AGENCIES GENERALLY

Chapter	Sec.
1. Organization .....	101
* * * * *	
6. <i>The Analysis of Regulatory Functions</i> .....	601
6A. <i>Office of Information and Regulatory Affairs Publication of Information Relating to Rules</i> .....	651
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### PART I—THE AGENCIES GENERALLY

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#### CHAPTER 6A—OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATION OF INFORMATION RELATING TO 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.

#### **§651. Agency monthly submission to Office of Information and Regulatory Affairs**

*On a monthly basis, the head of each agency shall submit to the Administrator of the Office of Information and Regulatory Affairs (referred to in this chapter as the “Administrator”), in such a manner as the Administrator may reasonably require, the following information:*

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

*(A) A summary of the nature of the rule, including the regulation identifier number and the docket number for the rule.*

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

*(i) any statutory or judicial deadline; and*

*(ii) whether the legal basis restricts or precludes the agency from conducting an analysis of the costs or benefits of the rule during the rule making, and if not, whether the agency plans to conduct an analysis of the costs or benefits of the rule during the rule making.*

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

(D) *The stage of the rule making as of the date of submission.*

(E) *Whether the rule is subject to review under section 610.*

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

(A) *an approximate schedule for completing action on the rule;*

(B) *an estimate of whether the rule will cost—*

*(i) less than \$50,000,000;*

*(ii) \$50,000,000 or more but less than \$100,000,000;*

*(iii) \$100,000,000 or more but less than \$500,000,000;*

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

*(v) \$1,000,000,000 or more but less than \$5,000,000,000;*

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

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

(C) *any estimate of the economic effects of the rule, including any estimate of the net effect that the rule will have on the number of jobs in the United States, that was considered in drafting the rule. If such estimate is not available, a statement affirming that no information on the economic effects, including the effect on the number of jobs, of the rule has been considered.*

## **§ 652. Office of Information and Regulatory Affairs Publications**

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

(b) *CUMULATIVE ASSESSMENT OF AGENCY RULE MAKING PUBLISHED ANNUALLY.—*

(1) *PUBLICATION IN THE FEDERAL REGISTER.—Not later than October 1 of each year, the Administrator shall publish in the Federal Register, for the previous year the following:*

(A) *The information that the Administrator received from the head of each agency under section 651.*

(B) *The number of rules and a list of each such rule—*

(i) that was proposed by each agency, including, for each such rule, an indication of whether the issuing agency conducted an analysis of the costs or benefits of the rule; and

(ii) that was finalized by each agency, including for each such rule an indication of whether—

(I) the issuing agency conducted an analysis of the costs or benefits of the rule;

(II) the agency claimed an exemption from the procedures under section 553 pursuant to section 553(b)(B); and

(III) the rule was issued pursuant to a statutory mandate or the rule making is committed to agency discretion by law.

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

(i) repealed a rule;

(ii) reduced the scope of a rule;

(iii) reduced the cost of a rule; or

(iv) accelerated the expiration date of a rule.

(D) The total cost (without reducing the cost by any offsetting benefits) of all rules proposed or finalized, and the number of rules for which an estimate of the cost of the rule was not available.

(2) **PUBLICATION ON THE INTERNET.**—Not later than October 1 of each year, the Administrator shall make publicly available on the Internet the following:

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

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

(C) The number of rules and a list of each such rule reviewed by the Director of the Office of Management and Budget for the previous year, and the authority under which each such review was conducted.

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

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

(F) The number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House of Representatives or the Senate under section 802.

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

(a) **IN GENERAL.**—Subject to subsection (b), a rule may not take effect until the information required to be made publicly available on the Internet regarding such rule pursuant to section 652(a) has been so available for not less than 6 months.

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

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

(2) *which the President determines by Executive Order should take effect because the rule is—*

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

(B) *necessary for the enforcement of criminal laws;*

(C) *necessary for national security; or*

(D) *issued pursuant to any statute implementing an international trade agreement.*

**§ 654. Definitions**

*In this chapter, the terms “agency”, “agency action”, “rule”, and “rule making” have the meanings given those terms in section 551.*

\* \* \* \* \*



## MINORITY VIEWS

H.R. 2804 would be unnecessarily burdensome for agencies. Agencies already are required to provide status updates twice a year on their plans for proposing and finalizing rules pursuant to the Regulatory Flexibility Act and Executive Order 12866. This bill would require agencies to report monthly.

The bill would require agencies to provide cost estimates for proposed rules that are expected to be finalized within the next year. Agencies may not have estimates at the time they propose rules. EO 12866 makes the inclusion of cost and benefit information discretionary, requiring agencies to provide, “to the extent possible, alternatives to be considered and preliminary estimates of the anticipated costs and benefits” in their regulatory plans. H.R. 2804 does not provide that discretion.

H.R. 2804 explicitly would prohibit the Office of Information and Regulatory Affairs (OIRA) from taking into account benefits when providing total cost estimates for proposed or final rules as required by the bill. In fact, the bill does not require agencies to report on the benefits of rules at all even though it requires agencies and OIRA to provide cost estimates of rules.

The bill also would prohibit agency rules from becoming effective until the information required by the bill has been available online for six months. This moratorium could be avoided only if the agency claims an exception from the notice and comments requirements of the Administrative Procedure Act or if the President issues an Executive Order determining that the rule is necessary because of an imminent threat to health or safety or other emergency, necessary for the enforcement of criminal laws, necessary for national security, or issued pursuant to any statute implementing an international trade agreement.

The bill also would require the Administrator of OIRA to issue a cumulative report annually. Some of the reporting requirements under this section are duplicative with current law. OIRA already issues an annual report on the total annual costs and benefits of federal rules and paperwork under the Regulatory Right-to-Know Act, P.L. 106–554. The bill also would require OIRA to report on the very same information that it would be required to post monthly under this bill. This section also would require OIRA to provide a report on the “number of rules and a list of each such rule for which a resolution of disapproval was introduced in either the House of Representatives or the Senate under section 802.” This requirement exemplifies the unnecessary and duplicative nature of H.R. 2804. Under this requirement, the Legislative Branch would be requiring the Executive Branch to report on the activities of the Legislative Branch.

ELIJAH E. CUMMINGS,  
*Ranking Member.*

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