

104TH CONGRESS
1ST SESSION

S. 343

To reform the regulatory process, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 2 (legislative day, JANUARY 30), 1995

Mr. DOLE (for himself, Mr. NICKLES, Mr. BOND, Mrs. HUTCHISON, Mr. MURKOWSKI, Mr. LOTT, Mr. COCHRAN, Mr. HATCH, Mr. DOMENICI, Mrs. KASSEBAUM, Mr. COATS, Mr. ABRAHAM, Mr. INHOFE, Mr. SMITH, Mr. SANTORUM, Mr. THOMPSON, Mr. WARNER, and Mr. KYL) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To reform the regulatory process, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive Regu-
5 latory Reform Act of 1995”.

6 **SEC. 2. ANALYSIS OF AGENCY PROPOSALS.**

7 (a) IN GENERAL.—Chapter 6 of title 5, United
8 States Code, is amended by adding at the end the follow-
9 ing:

1 “SUBCHAPTER II—ANALYSIS OF AGENCY
2 PROPOSALS

3 **“§ 621. Definitions**

4 “For purposes of this subchapter and subchapter III
5 of this chapter—

6 “(1) the term ‘agency’ has the same meaning as
7 in section 551(1) of this title;

8 “(2) the term ‘person’ has the same meaning as
9 in section 551(2) of this title;

10 “(3) the term ‘rule’ has the same meaning as
11 in section 551(4) of this title;

12 “(4)(A) the term ‘major rule’ means—

13 “(i) a rule or a group of closely related
14 rules that the agency proposing the rule or the
15 President reasonably determines is likely to
16 have a gross annual effect on the economy of
17 \$50,000,000 or more in reasonably quantifiable
18 increased direct and indirect costs, or has a sig-
19 nificant impact on a sector of the economy; or

20 “(ii) a rule or a group of closely related
21 rules that is otherwise designated a major rule
22 by the agency proposing the rule, or by the
23 President on the ground that the rule is likely
24 to result in—

1 “(I) a substantial increase in costs or
2 prices for wage earners, consumers, indi-
3 vidual industries, nonprofit organizations,
4 Federal, State, or local government agen-
5 cies, or geographic regions; or

6 “(II) significant adverse effects on
7 competition, employment, investment, pro-
8 ductivity, innovation, the environment,
9 public health or safety, or the ability of en-
10 terprises whose principal places of business
11 are in the United States to compete in do-
12 mestic or export markets;

13 “(B) the term ‘major rule’ does not include—

14 “(i) a rule that involves the internal reve-
15 nue laws of the United States; or

16 “(ii) a rule that authorizes the introduction
17 into commerce, or recognizes the marketable
18 status, of a product;

19 “(5) the term ‘benefit’ means the reasonably
20 identifiable significant benefits, including social and
21 economic benefits, that are expected to result di-
22 rectly or indirectly from implementation of a rule or
23 an alternative to a rule;

24 “(6) the term ‘cost’ means the reasonably iden-
25 tifiable significant costs and adverse effects, includ-

1 ing social and economic costs, reduced consumer
2 choice, substitution effects, and impeded techno-
3 logical advancement, that are expected to result di-
4 rectly or indirectly from implementation of, or com-
5 pliance with, a rule or an alternative to a rule; and

6 “(7) the term ‘market-based mechanism’ means
7 a regulatory program that—

8 “(A) imposes legal accountability for the
9 achievement of an explicit regulatory objective
10 on each regulated person;

11 “(B) affords maximum flexibility to each
12 regulated person in complying with mandatory
13 regulatory objectives, which flexibility shall,
14 where feasible and appropriate, include, but not
15 be limited to, the opportunity to transfer to, or
16 receive from, other persons, including for cash
17 or other legal consideration, increments of com-
18 pliance responsibility established by the pro-
19 gram; and

20 “(C) permits regulated persons to respond
21 automatically to changes in general economic
22 conditions and in economic circumstances di-
23 rectly pertinent to the regulatory program with-
24 out affecting the achievement of the program’s
25 explicit regulatory mandates.

1 **“§ 622. Rulemaking cost-benefit analysis**

2 “(a)(1) Prior to publishing notice of a proposed rule-
3 making for any rule (or, in the case of a notice of a pro-
4 posed rulemaking that has been published on or before the
5 date of enactment of this subchapter, not later than 30
6 days after such date of enactment), each agency shall de-
7 termine whether the rule is or is not a major rule within
8 the meaning of section 621(4)(A)(i) and, if it is not,
9 whether it should be designated a major rule under section
10 621(4)(A)(ii). For the purpose of any such determination
11 or designation, a group of closely related rules shall be
12 considered as one rule.

13 “(2) Each notice of proposed rulemaking shall in-
14 clude a succinct statement and explanation of the agency’s
15 determination under paragraph (1).

16 “(b)(1) If an agency has determined that a rule is
17 not a major rule within the meaning of section
18 621(4)(A)(i) and has not designated the rule a major rule
19 within the meaning of section 621(4)(A)(ii), the President
20 may, as appropriate, determine that the rule is a major
21 rule or designate the rule a major rule not later than 30
22 days after the publication of the notice of proposed rule-
23 making for the rule (or, in the case of a notice of proposed
24 rulemaking that has been published on or before the date
25 of enactment of this subchapter, not later than 60 days
26 after such date of enactment).

1 “(2) Such determination or designation shall be pub-
2 lished in the Federal Register, together with a succinct
3 statement of the basis for the determination or designa-
4 tion.

5 “(c)(1)(A) When the agency publishes a notice of pro-
6 posed rulemaking for a major rule, the agency shall issue
7 and place in the rulemaking record a draft cost-benefit
8 analysis, and shall include a summary of such analysis in
9 the notice of proposed rulemaking.

10 “(B)(i) When the President has published a deter-
11 mination or designation that a rule is a major rule after
12 the publication of the notice of proposed rulemaking for
13 the rule, the agency shall promptly issue and place in the
14 rulemaking file a draft cost-benefit analysis for the rule
15 and shall publish in the Federal Register a summary of
16 such analysis.

17 “(ii) Following the issuance of a draft cost-benefit
18 analysis under clause (i), the agency shall give interested
19 persons an opportunity to comment pursuant to section
20 553 of this title in the same manner as if the draft cost-
21 benefit analysis had been issued with the notice of pro-
22 posed rulemaking.

23 “(2) Each draft cost-benefit analysis shall contain—

24 “(A) an analysis of the benefit of the proposed
25 rule, and an explanation of how the agency antici-

1 pates each benefit will be achieved by the proposed
2 rule;

3 “(B) an analysis of the costs of the proposed
4 rule, and an explanation of how the agency antici-
5 pates each such cost will result from the proposed
6 rule;

7 “(C) an identification (including an analysis of
8 the costs and benefits) of reasonable alternatives for
9 achieving the identified benefits of the proposed rule,
10 including alternatives that—

11 “(i) require no Government action;

12 “(ii) will accommodate differences among
13 geographic regions and among persons with dif-
14 fering levels of resources with which to comply;
15 and

16 “(iii) employ performance or other market-
17 based standards that permit the greatest flexi-
18 bility in achieving the identified benefits of the
19 proposed rule and that comply with the require-
20 ments of subparagraph (D);

21 “(D) an assessment of the feasibility of estab-
22 lishing a regulatory program that operates through
23 the application of market-based mechanisms;

24 “(E) in any case in which the proposed rule is
25 based on one or more scientific evaluations or infor-

1 mation or is subject to the risk assessment require-
2 ments of subchapter III, a description of actions un-
3 dertaken by the agency to verify the quality, reliabil-
4 ity, and relevance of such scientific evaluations or
5 scientific information in accordance with the risk as-
6 sessment requirements of subchapter III;

7 “(F) an assessment of the aggregate effect of
8 the rule on small businesses with fewer than 100
9 employees, including an assessment of the net em-
10 ployment effect of the rule; and

11 “(G) an analysis of whether the identified bene-
12 fits of the proposed rule are likely to exceed the
13 identified costs of the proposed rule, and an analysis
14 of whether the proposed rule will provide greater net
15 benefits to society than any of the alternatives to the
16 proposed rule, including alternatives identified in ac-
17 cordance with subparagraph (C).

18 “(d)(1) When the agency publishes a final major rule,
19 the agency shall also issue and place in the rulemaking
20 record a final cost-benefit analysis, and shall include a
21 summary of the analysis in the statement of basis and
22 purpose.

23 “(2) Each final cost-benefit analysis shall contain—

24 “(A) a description and comparison of the bene-
25 fits and costs of the rule and of the reasonable alter-

1 natives to the rule described in the rulemaking, in-
2 cluding the market-based mechanisms identified pur-
3 suant to subsection (c)(2)(D); and

4 “(B) an analysis, based upon the rulemaking
5 record considered as a whole, of—

6 “(i) whether the benefits of the rule out-
7 weigh the costs of the rule; and

8 “(ii) whether the rule will provide greater
9 net benefits to society than any of the alter-
10 natives described in the rulemaking, including
11 the market-based incentives identified pursuant
12 to subsection (c)(2)(D).

13 “(e)(1)(A) The description of the benefits and costs
14 of a proposed and a final rule required under this section
15 shall include, to the extent feasible, a quantification or nu-
16 merical estimate of the quantifiable benefits and costs.
17 Such quantification or numerical estimate shall be made
18 in the most appropriate unit of measurement, using com-
19 parable assumptions, including time periods, and shall
20 specify the ranges of predictions and shall explain the
21 margins of error involved in the quantification methods
22 and in the estimates used. An agency shall describe the
23 nature and extent of the nonquantifiable benefits and
24 costs of a final rule pursuant to this section in as precise
25 and succinct a manner as possible.

1 “(B) Where practicable, the description of the bene-
2 fits and costs of a proposed and final rule required under
3 this section shall describe such benefits and costs on an
4 industry by industry basis.

5 “(2)(A) In evaluating and comparing costs and bene-
6 fits and in evaluating the risk assessment information de-
7 veloped pursuant to subchapter III, the agency shall not
8 rely on cost, benefit, or risk assessment information that
9 is not accompanied by data, analysis, or other supporting
10 materials that would enable the agency and other persons
11 interested in the rulemaking to assess the accuracy, reli-
12 ability, and uncertainty factors applicable to such informa-
13 tion.

14 “(B) The agency evaluations of the relationships of
15 the benefits of a proposed and final rule to its costs shall
16 be clearly articulated in accordance with this section.

17 **“§ 623. Decisional criteria**

18 “(a) No final rule subject to this subchapter shall be
19 promulgated unless the agency finds that—

20 “(1) the potential benefits to society from the
21 rule outweigh the potential costs of the rule to soci-
22 ety, as determined by the analysis required by sec-
23 tion 622(d)(2)(B); and

24 “(2) the rule will provide greater net benefits to
25 society than any of the reasonable alternatives iden-

1 tified pursuant to section 622(c)(2)(C), including the
2 market-based mechanisms identified pursuant to sec-
3 tion 622(c)(2)(D).

4 “(b) The requirements of this section shall supple-
5 ment the decisional criteria for rulemaking otherwise ap-
6 plicable under the statute granting the rulemaking author-
7 ity, except when such statute contains explicit textual lan-
8 guage prohibiting the consideration of the criteria set
9 forth in this section. Where the agency finds that consider-
10 ation of the criteria set forth in this section is prohibited
11 by explicit statutory language, the agency shall transmit
12 its finding to Congress, along with the final cost-benefit
13 analysis required by section 622(d)(2)(B).

14 **“§ 624. Judicial review**

15 “(a) Compliance or noncompliance by an agency with
16 the provisions of this subchapter shall be subject to judi-
17 cial review in accordance with this section.

18 “(b)(1) Each of the following shall be subject to judi-
19 cial review:

20 “(A) A determination by an agency or by the
21 President that a rule is or is not a major rule within
22 the meaning of section 621(4).

23 “(B) A designation by an agency or by the
24 President of a rule as a major rule.

1 “(C) A decision by an agency or by the Presi-
2 dent not to designate a rule a major rule.

3 “(2) A determination by an agency or by the Presi-
4 dent that a rule is not a major rule within the meaning
5 of section 621(4), or the decision by an agency or by the
6 President not to designate a rule a major rule, shall be
7 set aside by a reviewing court only upon a showing of clear
8 and convincing evidence that the determination or decision
9 not to designate is erroneous in light of the information
10 available to the agency at the time the determination or
11 decision not to designate was made.

12 “(3) An action to review a determination that a rule
13 is not a major rule or to review a decision not to designate
14 shall be filed not later than 30 days after the date of publi-
15 cation of such determination or failure to designate.

16 “(c) If a court of the United States finds that a rule
17 should have been reviewed pursuant to this subchapter,
18 such rule shall have no force or effect until such time as
19 the requirements of this subchapter are met.

20 “(d) Each court with jurisdiction to review final agen-
21 cy action under the statute granting the agency authority
22 to conduct the rulemaking shall have jurisdiction to review
23 findings by any agency under this subchapter and shall
24 set aside agency action that fails to satisfy the decisional
25 criteria of section 623. The court shall apply the same

1 standards of judicial review that apply to the review of
2 agency findings under the statute granting the agency au-
3 thority to conduct the rulemaking.

4 **“§ 625. Petition for cost-benefit analysis**

5 “(a)(1) Any person subject to a major rule may peti-
6 tion the relevant agency or the President to perform a
7 cost-benefit analysis under this subchapter for the major
8 rule, including a major rule in effect on the date of enact-
9 ment of this subchapter for which a cost-benefit analysis
10 pursuant to such subchapter has not been performed, re-
11 gardless of whether a cost-benefit analysis was previously
12 performed to meet requirements imposed before the date
13 of enactment of this subchapter.

14 “(2) The petition shall identify with reasonable speci-
15 ficity the major rule to be reviewed.

16 “(3) The agency or the President shall grant the peti-
17 tion if the petition shows that there is a reasonable likeli-
18 hood that the costs of the major rule outweigh the bene-
19 fits, or that reasonable questions exist as to whether the
20 rule provides greater net benefits to society than any rea-
21 sonable alternative to the rule that may be more clearly
22 resolved through examination pursuant to this subchapter
23 and subchapter III.

24 “(4) A decision to grant or deny a petition under this
25 subsection shall be made not later than 180 days after

1 submittal. A decision to deny a petition shall be subject
2 to judicial review immediately upon denial as final agency
3 action under the statute granting the agency authority to
4 conduct the rulemaking.

5 “(b) For each major rule for which a petition has
6 been granted under subsection (a), the agency shall con-
7 duct a cost-benefit analysis in accordance with this sub-
8 chapter, and shall determine whether the rule satisfies the
9 decisional criteria set forth in section 623. If the rule does
10 not satisfy the decisional criteria, then the agency shall
11 take immediate action to either revoke or amend the rule
12 to conform the rule to the requirements of this subchapter
13 and the decisional criteria under section 623.

14 “(c) For purposes of this section, the term ‘major
15 rule’ means any major rule or portion thereof.

16 “(d)(1) Any person may petition the relevant agency
17 to withdraw, as contrary to this subchapter, any agency
18 guidance or general statement of policy that would be a
19 major rule if the guidance or general statement of policy
20 had been adopted as a rule.

21 “(2) The petition shall identify with reasonable speci-
22 ficity why the guidance or general statement of policy
23 would be major if adopted as a rule.

24 “(3) The agency shall grant the petition if the peti-
25 tion shows that there is a reasonable likelihood that the

1 guidance or general statement of policy would be major
2 if adopted as a rule.

3 “(4) A decision to grant or deny a petition under this
4 subsection shall be made not later than 180 days after
5 the petition is submitted. If the agency fails to act by such
6 date, the petition shall be deemed to have been granted.
7 A decision to deny a petition shall be subject to judicial
8 review immediately upon denial as final agency action
9 under the statute under which the agency has issued the
10 guidance or general statement of policy.

11 “(e) For each petition granted under subsection (d),
12 the agency shall be prohibited from enforcing against any
13 person the regulatory standards or criteria contained in
14 such guidance or policy unless included in a rule proposed
15 and promulgated in accordance with this subchapter.

16 **“§ 626. Effective date of final regulations**

17 “(a)(1) Beginning on the date of enactment of this
18 section, all deadlines in statutes that require agencies to
19 propose or promulgate any rule subject to this subchapter
20 are suspended until such time as the requirements of this
21 subchapter are satisfied.

22 “(2) Beginning on the date of enactment of this sec-
23 tion, the jurisdiction of any court of the United States
24 to enforce any deadline that would require an agency to
25 propose or promulgate a rule subject to subchapter II of

1 chapter 5 of title 5, United States Code (as added by this
2 section), is suspended until such time as the requirements
3 of this subchapter are satisfied.

4 “(3) In any case in which the failure to promulgate
5 a rule by a deadline would create an obligation to regulate
6 through individual adjudications, the obligation to conduct
7 individual adjudications shall be suspended to allow the
8 requirements of this subchapter to be satisfied.

9 “(b)(1) Before a major rule takes effect as a final
10 rule, the agency promulgating such rule shall submit to
11 the Congress a copy of such rule and a report containing
12 a concise general statement relating to the rule, including
13 a complete copy of the cost-benefit analysis, and the pro-
14 posed effective date of the rule.

15 “(2) A major rule relating to a report submitted
16 under paragraph (1) shall take effect as a final rule, the
17 latest of—

18 “(A) the later of the date occurring 45 days
19 after the date on which—

20 “(i) the Congress receives the report sub-
21 mitted under paragraph (1); or

22 “(ii) the rule is published in the Federal
23 Register;

24 “(B) if the Congress passes a joint resolution of
25 disapproval described under subsection (h) relating

1 to the rule, and the President signs a veto of such
2 resolution, the earlier date—

3 “(i) on which either House of Congress
4 votes and fails to override the veto of the Presi-
5 dent; or

6 “(ii) occurring 30 session days after the
7 date on which the Congress received the veto
8 and objections of the President; or

9 “(C) the date the rule would have otherwise
10 taken effect, if not for this section (unless a joint
11 resolution of disapproval under subsection (h) is en-
12 acted).

13 “(c) A rule shall not take effect as a final rule if the
14 Congress passes a joint resolution of disapproval described
15 under subsection (h).

16 “(d)(1) Notwithstanding any other provision of this
17 section (except subject to paragraph (3)), a rule that
18 would not take effect by reason of this section may take
19 effect if the President makes a determination under para-
20 graph (2) and submits written notice of such determina-
21 tion to the Congress.

22 “(2) Paragraph (1) applies to a determination made
23 by the President by Executive order that the rule should
24 take effect because such rule is—

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

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

5 “(C) necessary for national security.

6 “(3) An exercise by the President of the authority
7 under this subsection shall have no effect on the proce-
8 dures under subsection (h) or the effect of a joint resolu-
9 tion of disapproval under this section.

10 “(4) This subsection and an Executive order issued
11 by the President under this subsection shall not be subject
12 to judicial review by a court of the United States.

13 “(e)(1) Subsection (h) shall apply to any rule that
14 is published in the Federal Register (as a rule that shall
15 take effect as a final rule) during the period beginning
16 on the date occurring 60 days before the date the Con-
17 gress adjourns sine die through the date on which the suc-
18 ceeding Congress first convenes.

19 “(2) For purposes of subsection (h), a rule described
20 under paragraph (1) shall be treated as though such rule
21 were published in the Federal Register (as a rule that shall
22 take effect as a final rule) on the date the succeeding Con-
23 gress first convenes.

24 “(3) During the period between the date the Congress
25 adjourns sine die through the date on which the succeed-

1 ing Congress first convenes, a rule described under para-
2 graph (1) shall take effect as a final rule as otherwise pro-
3 vided by law.

4 “(f) Any rule that takes effect and later is made of
5 no force or effect by the enactment of a joint resolution
6 under subsection (h) shall be treated as though such rule
7 had never taken effect.

8 “(g) If the Congress does not enact a joint resolution
9 of disapproval under subsection (h), no court or agency
10 may infer any intent of the Congress from any action or
11 inaction of the Congress with regard to such rule, related
12 statute, or joint resolution of disapproval.

13 “(h)(1) For purposes of this subsection, the term
14 ‘joint resolution’ means only a joint resolution introduced
15 after the date on which the report referred to in subsection
16 (b) is received by Congress the matter after the resolving
17 clause of which is as follows: ‘That Congress disapproves
18 the rule submitted by the _____ relating to _____,
19 and such rule shall have no force or effect. (The blank
20 spaces being appropriately filled in.)’.

21 “(2)(A) A resolution described in paragraph (1) shall
22 be referred to the committees in each House of Congress
23 with jurisdiction. Such a resolution shall not be reported
24 before the eighth day after its submission or publication
25 date.

1 “(B) For purposes of this subsection the term ‘sub-
2 mission or publication date’ means the later of the date
3 on which—

4 “(i) the Congress receives the report submitted
5 under subsection (b)(1); or

6 “(ii) the rule is published in the Federal Reg-
7 ister.

8 “(3) If the committee to which a resolution described
9 in paragraph (1) is referred has not reported such resolu-
10 tion (or an identical resolution) at the end of 20 calendar
11 days after its submission or publication date, such com-
12 mittee may be discharged by the Majority Leader of the
13 Senate or the Majority Leader of the House of Represent-
14 atives, as the case may be, from further consideration of
15 such resolution and such resolution shall be placed on the
16 appropriate calendar of the House involved.

17 “(4)(A) When the committee to which a resolution
18 is referred has reported, or when a committee is dis-
19 charged (under paragraph (3)) from further consideration
20 of, a resolution described in paragraph (1), it shall at any
21 time thereafter be in order (even though a previous motion
22 to the same effect has been disagreed to) for any Member
23 of the respective House to move to proceed to the consider-
24 ation of the resolution, and all points of order against the
25 resolution (and against consideration of the resolution)

1 shall be waived. The motion shall be highly privileged in
2 the House of Representatives and shall be privileged in
3 the Senate and shall not be debatable. The motion shall
4 not subject to amendment, or to a motion to postpone,
5 or to a motion to proceed to the consideration of other
6 business. A motion to reconsider the vote by which the
7 motion is agreed to or disagreed to shall not be in order.
8 If a motion to proceed to the consideration of the resolu-
9 tion is agreed to, the resolution shall remain the unfin-
10 ished business of the respective House until disposed of.

11 “(B) Debate on the resolution, and on all debatable
12 motions and appeals in connection therewith, shall be lim-
13 ited to not more than 10 hours, which shall be divided
14 equally between those favoring and those opposing the res-
15 olution. A motion further to limit debate shall be in order
16 and shall not be debatable. An amendment to, or a motion
17 to postpone, or a motion to proceed to the consideration
18 of other business, or a motion to recommit the resolution
19 shall not be in order. A motion to reconsider the vote by
20 which the resolution is agreed to or disagreed to shall not
21 be in order.

22 “(C) Immediately following the conclusion of the de-
23 bate on a resolution described in paragraph (1), and a sin-
24 gle quorum call at the conclusion of the debate if re-
25 quested in accordance with the rules of the appropriate

1 House, the vote on final passage of the resolution shall
2 occur.

3 “(D) Appeals from the decisions of the Chair relating
4 to the application of the rules of the Senate or the House
5 of Representatives, as the case may be, to the procedure
6 relating to a resolution described in paragraph (1) shall
7 be decided without debate.

8 “(5) If, before the passage by one House of a resolu-
9 tion of that House described in paragraph (1), that House
10 receives from the other House a resolution described in
11 paragraph (1), then the following procedures shall apply:

12 “(A) The resolution of the other House shall
13 not be referred to a committee.

14 “(B) With respect to a resolution described in
15 paragraph (1) of the House receiving the resolu-
16 tion—

17 “(i) the procedure in that House shall be
18 the same as if no resolution had been received
19 from the other House; but

20 “(ii) the vote on final passage shall be on
21 the resolution of the other House.

22 “(6) This subsection is enacted by Congress—

23 “(A) as an exercise of the rulemaking power of
24 the Senate and House of Representatives, respec-
25 tively, and as such it is deemed to be a part of the

1 rules of each House, respectively, but applicable only
2 with respect to the procedure to be followed in that
3 House in the case of a resolution described in para-
4 graph (1), and it supersedes other rules only to the
5 extent that it is inconsistent with such rules; and

6 “(B) with full recognition of the constitutional
7 right of either House to change the rules (so far as
8 relating to the procedure of that House) at any time,
9 in the same manner, and to the same extent as in
10 the case of any other rule of that House.

11 **“§ 627. Unauthorized rulemakings**

12 “(a) Notwithstanding any other provision of law, be-
13 ginning on July 1, 1995, any rule that expands Federal
14 power or jurisdiction beyond the level of regulatory action
15 needed to satisfy statutory requirements shall be prohib-
16 ited.

17 “(b) Nothing in this section shall be construed to pre-
18 vent any agency from promulgating a rule that repeals,
19 narrows, or streamlines a rule, regulation, or administra-
20 tive process, or from issuing or promulgating a rule pro-
21 viding for tax relief or clarification or reducing regulatory
22 burdens.

1 **“§ 628. Standard for review of agency interpretations**
2 **of an enabling statute**

3 “(a) In reviewing a final agency action under section
4 706 of this title, or under a statute that provides for re-
5 view of a final agency action, the reviewing court shall af-
6 firm the agency’s interpretation of the statute granting
7 authority to promulgate the rule if, applying traditional
8 principles of statutory construction, the reviewing court
9 finds that the interpretation is clearly the interpretation
10 of the statute intended by Congress.

11 “(b) If the reviewing court, applying traditional prin-
12 ciples of statutory construction, finds that an interpreta-
13 tion other than the interpretation applied by the agency
14 is clearly the interpretation of the statute intended by
15 Congress, the reviewing court shall find that the agency’s
16 interpretation is erroneous and contrary to law.

17 “(c)(1) If the reviewing court, applying established
18 principles of statutory construction, finds that the statute
19 gives the agency discretion to choose from among a range
20 of permissible statutory constructions, the reviewing court
21 shall affirm the agency’s interpretation where the record
22 on review establishes that—

23 “(A) the agency has correctly identified the
24 range of permissible statutory constructions;

25 “(B) the interpretation chosen is one that is
26 within that range; and

1 “(C) the agency has engaged in reasoned deci-
2 sionmaking in determining that the interpretation,
3 rather than other permissible constructions of the
4 statute, is the one that maximizes net benefits to so-
5 ciety.

6 “(2) If an agency’s interpretation of a statute cannot
7 be affirmed under paragraph (1), the reviewing court shall
8 find that the agency’s interpretation is arbitrary and ca-
9 pricious.

10 “SUBCHAPTER IV—EXECUTIVE OVERSIGHT

11 “**§ 651. Procedures**

12 “The President shall—

13 “(1) establish procedures for agency compliance
14 with subchapters II and III; and

15 “(2) monitor, review, and ensure agency imple-
16 mentation of such procedures.

17 “**§ 652. Promulgation and adoption**

18 “(a) Procedures established pursuant to section 651
19 shall only be implemented after opportunity for public
20 comment. Any such procedures shall be consistent with the
21 prompt completion of rulemaking proceedings.

22 “(b)(1) If procedures established pursuant to section
23 651 include review of preliminary or final regulatory anal-
24 yses to ensure that they comply with subchapters II and
25 III, the time for any such review of a preliminary regu-

1 latory analysis shall not exceed 30 days following the re-
2 ceipt of the analysis by the President or by an officer to
3 whom the authority granted under section 651 has been
4 delegated pursuant to section 653.

5 “(2) The time for review of a final regulatory analysis
6 shall not exceed 30 days following the receipt of the analy-
7 sis by the President or such officer.

8 “(3)(A) The times for each such review may be ex-
9 tended for good cause by the President or such officer for
10 an additional 30 days.

11 “(B) Notice of any such extension, together with a
12 succinct statement of the reasons therefor, shall be in-
13 serted in the rulemaking file.

14 **“§ 653. Delegation of authority**

15 “(a) The President may delegate the authority grant-
16 ed by this subchapter to the Vice President or to an officer
17 within the Executive Office of the President whose ap-
18 pointment has been subject to the advice and consent of
19 the Senate.

20 “(b)(1) Notice of any delegation, or any revocation
21 or modification thereof, shall be published in the Federal
22 Register.

23 “(2) Any notice with respect to a delegation to the
24 Vice President shall contain a statement by the Vice Presi-
25 dent that the Vice President will make every reasonable

1 effort to respond to congressional inquiries concerning the
2 exercise of the authority delegated under this section.

3 **“§ 654. Applicability**

4 “The authority granted under this subchapter shall
5 not apply to rules issued by the Nuclear Regulatory Com-
6 mission.

7 **“§ 655. Judicial review**

8 “The exercise of the authority granted under this
9 subchapter by the President or by an officer to whom such
10 authority has been delegated under section 653 shall not
11 be subject to judicial review in any manner under this
12 chapter.”.

13 (b) JUDICIAL REVIEW OF REGULATORY FLEXIBILITY
14 ANALYSIS.—

15 (1) AMENDMENT.—Section 611 of title 5, Unit-
16 ed States Code, is amended to read as follows:

17 **“§ 611. Judicial review**

18 “(a)(1) Except as provided in paragraph (2), not
19 later than 1 year after the effective date of a final rule
20 with respect to which an agency—

21 “(A) certified, pursuant to section 605(b), that
22 such rule would not have a significant economic im-
23 pact on a substantial number of small entities; or

24 “(B) prepared final regulatory flexibility analy-
25 sis pursuant to section 604,

1 an affected small entity may petition for the judicial re-
2 view of such certification or analysis in accordance with
3 this subsection. A court having jurisdiction to review such
4 rule for compliance with section 553 of this title or under
5 any other provision of law shall have jurisdiction to review
6 such certification or analysis.

7 “(2)(A) Except as provided in subparagraph (B), in
8 the case of a provision of law that requires that an action
9 challenging a final agency regulation be commenced before
10 the expiration of the 1-year period provided in paragraph
11 (1), such lesser period shall apply to a petition for the
12 judicial review under this subsection.

13 “(B) In a case in which an agency delays the issuance
14 of a final regulatory flexibility analysis pursuant to section
15 608(b), a petition for judicial review under this subsection
16 shall be filed not later than—

17 “(i) 1 year; or

18 “(ii) in a case in which a provision of law re-
19 quires that an action challenging a final agency reg-
20 ulation be commenced before the expiration of the 1-
21 year period provided in paragraph (1), the number
22 of days specified in such provision of law,
23 after the date the analysis is made available to the public.

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

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

8 “(5)(A) In a case in which an agency certifies that
9 such rule would not have a significant economic impact
10 on a substantial number of small entities, the court may
11 order the agency to prepare a final regulatory flexibility
12 analysis pursuant to section 604 if the court determines,
13 on the basis of the rulemaking record, that the certifi-
14 cation was arbitrary, capricious, an abuse of discretion,
15 or otherwise not in accordance with law.

16 “(B) In a case in which the agency prepared a final
17 regulatory flexibility analysis, the court may order the
18 agency to take corrective action consistent with section
19 604 if the court determines, on the basis of the rulemaking
20 record, that the final regulatory flexibility analysis was
21 prepared by the agency without complying with section
22 604.

23 “(6) If, by the end of the 90-day period beginning
24 on the date of the order of the court pursuant to para-

1 graph (5) (or such longer period as the court may pro-
2 vide), the agency fails, as appropriate—

3 “(A) to prepare the analysis required by section
4 604; or

5 “(B) to take corrective action consistent with
6 section 604 of this title,

7 the court may stay the rule or grant such other relief as
8 it deems appropriate.

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

12 “(b) In an action for the judicial review of a rule,
13 any regulatory flexibility analysis for such rule (including
14 an analysis prepared or corrected pursuant to subsection
15 (a)(5)) shall constitute part of the whole record of agency
16 action in connection with such review.

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

21 (2) EFFECTIVE DATE.—The amendment made
22 by paragraph (1) shall take effect on the date of en-
23 actment of this Act, except that the judicial review
24 authorized by section 611(a) of title 5, United
25 States Code (as added by subsection (a)), shall apply

1 only to final agency rules issued after the date of en-
2 actment of this Act.

3 (c) PRESIDENTIAL AUTHORITY.—Nothing in this Act
4 shall limit the exercise by the President of the authority
5 and responsibility that the President otherwise possesses
6 under the Constitution and other laws of the United
7 States with respect to regulatory policies, procedures, and
8 programs of departments, agencies, and offices.

9 (d) TECHNICAL AND CONFORMING AMENDMENTS.—
10 (1) Part I of title 5, United States Code, is amended by
11 striking out the chapter heading and table of sections for
12 chapter 6 and inserting in lieu thereof the following:

13 **“CHAPTER 6—THE ANALYSIS OF**
14 **REGULATORY FUNCTIONS**

 “SUBCHAPTER I—REGULATORY ANALYSIS

- “Sec.
- “601. Definitions.
- “602. Regulatory agenda.
- “603. Initial regulatory flexibility analysis.
- “604. Final regulatory flexibility analysis.
- “605. Avoidance of duplicative or unnecessary analyses.
- “606. Effect on other law.
- “607. Preparation of analyses.
- “608. Procedure for waiver or delay of completion.
- “609. Procedures for gathering comments.
- “610. Periodic review of rules.
- “611. Judicial review.
- “612. Reports and intervention rights.

 “SUBCHAPTER II—ANALYSIS OF AGENCY PROPOSALS

- “621. Definitions.
- “622. Rulemaking cost-benefit analysis.
- “623. Decisional criteria.
- “624. Judicial review.
- “625. Petition for cost-benefit analysis.
- “626. Effective date of final regulations.
- “627. Unauthorized rulemakings.

“628. Standard for review of agency interpretations of an enabling statute.

“SUBCHAPTER III—RISK ASSESSMENTS

- “631. Definitions.
- “632. Applicability.
- “633. Rule of construction.
- “634. Requirement to prepare risk assessments.
- “635. Principles for risk assessment.
- “636. Principles for risk characterization and communication.
- “637. Regulations; plan for assessing new information.
- “638. Decisional criteria.
- “639. Regulatory priorities.
- “640. Establishment of program.

“SUBCHAPTER IV—EXECUTIVE OVERSIGHT

- “651. Procedures.
- “652. Promulgation and adoption.
- “653. Delegation of authority.
- “654. Applicability.
- “655. Judicial review.”.

- 1 (2) Chapter 6 of title 5, United States Code, is
- 2 amended by inserting immediately before section 601, the
- 3 following subchapter heading:
- 4 “SUBCHAPTER I—REGULATORY ANALYSIS”.



S 343 IS—2

S 343 IS—3

S 343 IS—4