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1ST SESSION

S. 100

To reduce Federal agency regulatory burdens on the public, improve the quality of agency regulations, increase agency accountability for regulatory actions, provide for the review of agency regulations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. GLENN introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To reduce Federal agency regulatory burdens on the public, improve the quality of agency regulations, increase agency accountability for regulatory actions, provide for the review of agency regulations, 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 “Regulatory Account-
5 ability Act of 1995”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

1 (1) reduce the burden of Federal regulations on
2 individuals, businesses, State and local governments,
3 and others in order to promote the Nation’s eco-
4 nomic growth, productivity, competitiveness, and
5 general welfare;

6 (2) ensure that Federal agency regulations ful-
7 fill statutory requirements and policies in an effi-
8 cient, effective, rational and well-reasoned manner;

9 (3) increase agency accountability for regu-
10 latory actions;

11 (4) improve coordination and minimize duplica-
12 tion and conflict among agency regulations;

13 (5) provide for Presidential oversight of agency
14 regulatory actions; and

15 (6) improve the effectiveness of opportunities
16 for public participation in the rulemaking and regu-
17 latory review process.

18 **SEC. 3. DEFINITIONS.**

19 For purposes of this Act, the term—

20 (1) “agency” means an agency as defined under
21 section 551(1) of title 5, United States Code, and
22 section 552(f) of title 5, United States Code, but
23 does not include independent regulatory agencies, as
24 defined under section 3502(10) of title 44, United
25 States Code;

1 (2) “Director” means the Director of the Office
2 of Management and Budget;

3 (3) “major rule” means any regulation that is
4 likely to—

5 (A) have an annual affect on the economy
6 of \$100,000,000 or more (annually adjusted by
7 the Consumer Price Index);

8 (B) significantly affect the economy, pro-
9 ductivity, competition, jobs, individual rights,
10 public health or safety, the environment, or
11 State, local, or tribal governments or commu-
12 nities;

13 (C) significantly effect a Government pro-
14 gram or the rights, obligations, or benefits of
15 participants under such program; or

16 (D) create a serious inconsistency or other-
17 wise interfere significantly with an action or
18 policy of another agency;

19 (4) “regulation” or “rule” means an agency
20 statement of general applicability and future effect,
21 which the agency intends to have the force and ef-
22 fect of law, that is designed to implement, interpret,
23 or prescribe law or policy, and shall not include—

24 (A) regulations or rules issued in accord-
25 ance with the formal rulemaking provisions of

1 sections 556 and 557 of title 5, United States
2 Code;

3 (B) regulations or rules that pertain to a
4 military or foreign affairs function of the Unit-
5 ed States, other than procurement regulations
6 and regulations involving the import or export
7 of nondefense articles and services;

8 (C) regulations or rules that are limited to
9 agency organization, management, or personnel
10 matters; or

11 (D) any other category of regulations ex-
12 empted by the Director;

13 (5) “regulatory action” means any substantive
14 action by an agency that promulgates or is expected
15 to lead to the promulgation of a final rule, including
16 notices of inquiry, schedules or plans for rulemaking,
17 advance notices of proposed rulemaking, notices of
18 proposed rulemaking, and other documents announc-
19 ing or implementing regulatory policy that affects
20 the public;

21 (6) “regulatory review” means the evaluation,
22 review, oversight, supervision, or coordination, on an
23 ongoing or organized basis, of agency regulatory ac-
24 tions by a reviewing entity;

1 (7) “review action” means any action by a re-
2 viewing entity, including a recommendation or direc-
3 tion to an agency, regarding an agency regulatory
4 action; and

5 (8) “reviewing entity” means any agency, estab-
6 lishment, or other office or officer in the executive
7 branch of the Federal Government designated by law
8 or the President to engage, in whole or in part in
9 regulatory review.

10 **SEC. 4. AGENCY REGULATORY ANALYSIS.**

11 (a) REGULATORY ACTION.—In undertaking any reg-
12 ulatory action, to the extent permitted by law, each agency
13 shall—

14 (1) consider, to the extent relevant to the regu-
15 latory action—

16 (A) the basis of, need for, and desired out-
17 come of the regulatory action;

18 (B) the costs and the benefits of the regu-
19 latory action, with the goal of imposing the
20 least burden on society consistent with the ob-
21 jectives of the regulatory action;

22 (C) the risks posed by the subject of the
23 regulatory action and their relationship to other
24 preventable risks posed by related substances or
25 activities within the jurisdiction of the agency;

1 (D) alternatives to the regulatory action;

2 (E) the relationship between the regulatory
3 action and existing Government regulations;

4 (F) the effects of the regulatory action on
5 State, local, and tribal governments;

6 (G) whether the regulatory action may
7 raise a substantial issue under the just com-
8 pensation clause of the fifth amendment of the
9 Constitution; and

10 (H) the regulatory action's consistency
11 with the purposes and requirements of this Act;
12 and

13 (2) certify, in any proposed or final rulemaking
14 notice associated with such regulatory action, agency
15 compliance with paragraph (1).

16 (b) MAJOR RULE REGULATORY ANALYSIS.—In pro-
17 mulgating any proposed or final major rule, to the extent
18 permitted by law and in addition to the requirements of
19 subsection (a), each agency shall prepare and consider a
20 major rule regulatory analysis. Such analysis shall in-
21 clude—

22 (1) an assessment and underlying analysis, to
23 the extent relevant to the rule, of—

24 (A) the statutory or other legal basis for,
25 the problem to be addressed by, and the pro-

1 grammatic purpose and desired outcome of the
2 rule;

3 (B) the economic, social, and other costs
4 and benefits anticipated from the rule, includ-
5 ing—

6 (i) a projection of cumulative costs
7 and benefits, together with, to the extent
8 feasible, a quantification of those costs and
9 benefits, and an identification of any costs
10 and benefits that cannot be quantified; and

11 (ii) an assessment of requirements
12 that would impose the least burden on so-
13 ciety, consistent with obtaining the objec-
14 tives of the rule;

15 (C) the costs and benefits of potentially ef-
16 fective and reasonably feasible alternatives to
17 the rule, including—

18 (i) alternatives to regulation and al-
19 ternative forms of regulation, including ap-
20 proaches that fulfill the purposes of chap-
21 ter 6 of title 5, United States Code; and

22 (ii) an explanation why the rule is
23 preferable to identified potential alter-
24 natives;

1 (D) the degree and nature of the risks
2 posed by the subject of the rule, including—

3 (i) an estimate, performed with as
4 much specificity as practicable, of the risk
5 to public health and safety and the envi-
6 ronment, including the risk to individuals;
7 and

8 (ii) an analysis comparing the risk ad-
9 dressed by the rule relative to other pre-
10 ventable risks posed by related substances
11 or activities within the jurisdiction of the
12 agency;

13 (E) the relationship between the rule and
14 existing Government regulations;

15 (F) the effects of the rule on State, local,
16 and tribal governments, including the ability of
17 such governments to comply with the require-
18 ments of the rule, and the cost of such compli-
19 ance;

20 (G) whether, and to what extent, the rule
21 may raise a substantial issue under the just
22 compensation clause of the fifth amendment of
23 the Constitution; and

24 (H) the rule's consistency with the pur-
25 poses and requirements of this Act, including

1 an executive order or other guidance issued
2 under section 5 of this Act; and

3 (2) a certification by the agency that—

4 (A) the rule will produce benefits that will
5 justify the cost to the Government and the pub-
6 lic of implementation of and compliance with
7 the rule;

8 (B) the assessment required under para-
9 graph (1) is supported by the best available sci-
10 entific, technical, economic, and other informa-
11 tion;

12 (C) the rule will substantially advance the
13 purpose of protecting public health and safety
14 or the environment against the specified identi-
15 fied risk; or

16 (D) in the event that the agency cannot
17 make the certification required under para-
18 graph (2) (A), (B), and (C), the agency shall
19 report to the Director and to the appropriate
20 committees of Congress that such certification
21 cannot be made and shall include a statement
22 of the reasons therefor in such report and in
23 the rule.

24 (c) COMPLIANCE WITH REGULATORY REVIEW.—In
25 conducting the analysis required under this section and

1 in undertaking any regulatory action, each agency shall
2 consider the results of any regulatory review, as estab-
3 lished under section 5, and comply with those results to
4 the extent permitted by law and supported by the regu-
5 latory agency's rulemaking record.

6 **SEC. 5. PRESIDENTIAL REGULATORY REVIEW.**

7 (a) IN GENERAL.—The President shall, by executive
8 order and to the extent permitted by law, establish a proc-
9 ess for the centralized review and coordination of Federal
10 agency regulatory actions. Such review shall be conducted
11 by and be the responsibility of the Director of the Office
12 of Management and Budget, except to the extent that the
13 President designates another reviewing entity to resolve
14 conflicts, as provided under subsection (f).

15 (b) REGULATORY REVIEW.—For the purpose of car-
16 rying out the review established under subsection (a), the
17 Director shall—

18 (1) develop and oversee uniform regulatory poli-
19 cies and procedures, including those by which each
20 agency shall—

21 (A) estimate the economic, social, and
22 other costs and benefits of rules, on both an ag-
23 gregate and economic sector basis, including for
24 the purpose of assessing the impact of such
25 rules on the Nation's economic competitiveness;

1 (B) assess the degree and nature of the
2 risks posed by the subjects of rules and the re-
3 lationship of such risks to other preventable
4 risks posed by related substances or activities
5 within the jurisdiction of the agency;

6 (C) identify major rules, prepare regu-
7 latory analyses, and submit regulatory actions
8 to the Director or other reviewing entity for re-
9 view under this section; and

10 (D) maximize accountability for, and pub-
11 lic participation in, the development of regu-
12 latory actions, including as required under sec-
13 tion 6 of this Act;

14 (2) develop policies and procedures for regu-
15 latory review, including those by which the Director
16 shall—

17 (A) designate proposed, final, or existing
18 rules as major rules or waive the requirements
19 of this Act with respect to any major rule;

20 (B) designate current regulatory actions or
21 existing rules for analysis and review in accord-
22 ance with this Act; and

23 (C) review agency regulatory actions to en-
24 sure that they are consistent with applicable
25 law, the purposes of this Act, and the policies

1 or actions of other agencies, including authority
2 of the Director to—

3 (i) identify any agency regulatory ac-
4 tions that are duplicative, conflicting, or
5 otherwise inconsistent with any law or pol-
6 icy or with the purposes of this Act; and

7 (ii) return to the agency for further
8 consideration any regulatory action in
9 order to minimize or eliminate duplication,
10 conflict, or inconsistency with any law or
11 policy or with the purposes of this Act; and

12 (3) develop and oversee an annual government-
13 wide regulatory planning process that shall include
14 review of planned agency major rules and other sig-
15 nificant regulatory actions and publication of—

16 (A) a summary of and schedule for pro-
17 mulgation of planned agency major rules;

18 (B) agency specific schedules for the analy-
19 sis and review of existing rules; and

20 (C) a summary of regulatory review ac-
21 tions undertaken in the prior year.

22 (c) TIME FOR REVIEW.—(1) The review established
23 under subsection (a) shall be conducted as expeditiously
24 as practicable and shall be limited to no more than 90
25 days from submission of a proposal to the Director or

1 other reviewing entity to conclusion of a review action or
2 a return to the agency for further consideration.

3 (2) Notwithstanding the provisions of paragraph (1),
4 the 90-day period of review may be extended for a definite
5 period by the Director for good cause and with public no-
6 tice.

7 (d) COMPLIANCE IN EMERGENCY SITUATIONS.—In
8 emergency situations or when an agency is obligated by
9 law to act more quickly than review procedures allow, the
10 agency shall notify the Director or other reviewing entity
11 as soon as possible and, to the extent practicable, comply
12 with the requirements of this Act. For those regulatory
13 actions that are governed by a statutory or court imposed
14 deadline, the agency shall, to the extent practicable, sched-
15 ule rulemaking proceedings so as to permit sufficient time
16 for the Director or other reviewing entity to comply with
17 the requirements of this Act.

18 (e) REGULATORY ACTION REVIEW BEFORE PUBLIC
19 AVAILABILITY.—Except to the extent required by law,
20 each agency shall not publish or otherwise issue to the
21 public any regulatory action that is subject to review
22 under this section until whichever of the following occurs
23 first—

24 (1) the Director or other reviewing entity has
25 waived review of the action, has completed review

1 without any requests for further consideration under
2 subsection (b)(2)(C), or otherwise approved publica-
3 tion; or

4 (2) the time period in subsection (c) expires
5 without the Director or other reviewing entity having
6 notified the agency that it is returning the regu-
7 latory action for further consideration under sub-
8 section (b)(2)(C).

9 (f) RESOLUTION OF AGENCY CONFLICTS.—To the
10 extent permitted by law, disagreements or conflicts be-
11 tween or among agencies or between the Director and an
12 agency regarding regulatory actions or regulatory review
13 that cannot be resolved by the Director, shall be resolved
14 by the President, or by a reviewing entity designated by
15 the President, pursuant to executive order, as provided
16 under subsection (a). Any review undertaken as provided
17 under this subsection shall comply with all other require-
18 ments of this Act.

19 **SEC. 6. PUBLIC PARTICIPATION AND ACCOUNTABILITY.**

20 In order to maximize accountability for, and public
21 participation in, the development and review of regulatory
22 actions—

23 (1) each agency shall, consistent with chapter 5
24 of title 5, United States Code, and other applicable
25 law, provide the public with opportunities for mean-

1 ingful participation in the development of regulatory
2 actions, including—

3 (A) seeking the involvement, where prac-
4 ticable and appropriate, of those who are in-
5 tended to benefit from and those who are ex-
6 pected to be burdened by any regulatory action;

7 (B) providing in any proposed or final
8 rulemaking notice published in the Federal
9 Register—

10 (i) a certification of compliance with
11 section 4(a) of this Act, or an explanation
12 why such certification cannot be made;

13 (ii) a summary of any regulatory anal-
14 ysis required under section 4(b) of this
15 Act, or under any other legal requirement,
16 and notice of the availability of the regu-
17 latory analysis;

18 (iii) a certification that the rule will
19 produce benefits that will justify the cost
20 to the Government and to the public of im-
21 plementation of, and compliance with, the
22 rule, or an explanation why such certifi-
23 cation cannot be made; and

24 (iv) a summary of the results of any
25 regulatory review and the agency's re-

1 sponse to such review, including an expla-
2 nation of any significant changes made to
3 such regulatory action as a consequence of
4 regulatory review;

5 (C) identifying, upon request, a regulatory
6 action and the date upon which it was submit-
7 ted to the Director for review;

8 (D) disclosure to the public of any infor-
9 mation created or collected in performing a reg-
10 ulatory analysis required under section 4 of this
11 Act, or under any other legal requirement; and

12 (E) placing in the appropriate rulemaking
13 record all information (including documents or
14 other communications, regardless of form or
15 format) received from the Director, other re-
16 viewing entity, or other individual or entity re-
17 lating to regulatory review; and

18 (2) the Director or other reviewing entity shall,
19 in carrying out regulatory review as established
20 under this Act, any other law, or any executive order
21 or other instructions from the President, establish
22 procedures (covering all employees of the Director or
23 other reviewing entity) to provide public and agency
24 access to information concerning regulatory review
25 actions, including—

1 (A) disclosure to the public on an ongoing
2 basis of information regarding the status of
3 regulatory actions undergoing review;

4 (B) disclosure to the public, no later than
5 publication of, or other substantive notice to the
6 public concerning a regulatory action, of—

7 (i) all written communications, re-
8 gardless of form or format, including
9 drafts of all proposals and associated anal-
10 yses, between the Director or other review-
11 ing entity and the regulatory agency;

12 (ii) all written communications, re-
13 gardless of form or format, between the
14 Director or other reviewing entity and any
15 person not employed by the executive
16 branch of the Federal Government relating
17 to the substance of a regulatory action;

18 (iii) a record of all oral communica-
19 tions relating to the substance of a regu-
20 latory action between the Director or other
21 reviewing entity and any person not em-
22 ployed by the executive branch of the Fed-
23 eral Government; and

1 (iv) a written explanation of any re-
2 view action and the date of such action;
3 and

4 (C) disclosure to the regulatory agency, on
5 a timely basis, of—

6 (i) all written communications, re-
7 gardless of form or format, between the
8 Director or other reviewing entity and any
9 person who is not employed by the execu-
10 tive branch of the Federal Government;

11 (ii) a record of, and an invitation to
12 participate in, all oral communications re-
13 lating to the substance of a regulatory ac-
14 tion between the Director or other review-
15 ing entity and any person not employed by
16 the executive branch of the Federal Gov-
17 ernment; and

18 (iii) a written explanation of any re-
19 view action taken concerning an agency
20 regulatory action, including an explanation
21 of any action taken under section 7 of this
22 Act.

23 **SEC. 7. RULES OF CONSTRUCTION.**

24 Insofar as rulemaking is fundamentally a matter of
25 decisionmaking authority to implement statutory require-

1 ments delegated by Congress to an office or officer of the
2 executive branch of the Federal Government, nothing in
3 this Act alters in any manner—

4 (1) rulemaking authority vested by law in the
5 head of an agency or other office or officer of the
6 executive branch of the Federal Government;

7 (2) any legally mandated criteria for rule-
8 making; or

9 (3) the application of any statutory or judicial
10 deadline or the authority of an agency to undertake
11 a regulatory action in an emergency situation.

12 **SEC. 8. JUDICIAL REVIEW.**

13 Nothing in this Act shall affect any otherwise avail-
14 able judicial review of agency action. Any regulatory anal-
15 ysis prepared under section 4 of this Act and the compli-
16 ance or noncompliance of an agency with provisions of this
17 Act shall not be subject to judicial review. If an action
18 for judicial review of a regulation is instituted, any regu-
19 latory analysis of such rule, information related to regu-
20 latory review or a review action, or the record of any deci-
21 sions by an agency with regard to such analysis or review
22 action, shall constitute part of the record of agency action
23 undergoing judicial review.

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