

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 343

To reform the regulatory process, and for other purposes.

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## 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

FEBRUARY 3 (legislative day, JANUARY 30), 1995

Ordered referred jointly to the Committees on the Judiciary and Governmental Affairs

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## 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”.

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

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

5 “SUBCHAPTER II—ANALYSIS OF AGENCY  
6 PROPOSALS

7 “§ 621. Definitions

8 “For purposes of this subchapter and subchapter III  
9 of this chapter—

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

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

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

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

17 “(i) a rule or a group of closely related  
18 rules that the agency proposing the rule or the  
19 President reasonably determines is likely to  
20 have a gross annual effect on the economy of  
21 \$50,000,000 or more in reasonably quantifiable  
22 increased direct and indirect costs, or has a sig-  
23 nificant impact on a sector of the economy; or

24 “(ii) a rule or a group of closely related  
25 rules that is otherwise designated a major rule  
26 by the agency proposing the rule, or by the

1 President on the ground that the rule is likely  
2 to result in—

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

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

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

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

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

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

1           “(6) the term ‘cost’ means the reasonably iden-  
2           tifiable significant costs and adverse effects, includ-  
3           ing social and economic costs, reduced consumer  
4           choice, substitution effects, and impeded techno-  
5           logical advancement, that are expected to result di-  
6           rectly or indirectly from implementation of, or com-  
7           pliance with, a rule or an alternative to a rule; and

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

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

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

22           “(C) permits regulated persons to respond  
23           automatically to changes in general economic  
24           conditions and in economic circumstances di-  
25           rectly pertinent to the regulatory program with-

1 out affecting the achievement of the program's  
2 explicit regulatory mandates.

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

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

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

18 “(b)(1) If an agency has determined that a rule is  
19 not a major rule within the meaning of section  
20 621(4)(A)(i) and has not designated the rule a major rule  
21 within the meaning of section 621(4)(A)(ii), the President  
22 may, as appropriate, determine that the rule is a major  
23 rule or designate the rule a major rule not later than 30  
24 days after the publication of the notice of proposed rule-  
25 making for the rule (or, in the case of a notice of proposed

1 rulemaking that has been published on or before the date  
2 of enactment of this subchapter, not later than 60 days  
3 after such date of enactment).

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

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

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

20       “(ii) Following the issuance of a draft cost-benefit  
21 analysis under clause (i), the agency shall give interested  
22 persons an opportunity to comment pursuant to section  
23 553 of this title in the same manner as if the draft cost-  
24 benefit analysis had been issued with the notice of pro-  
25 posed rulemaking.

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

2 “(A) an analysis of the benefit of the proposed  
3 rule, and an explanation of how the agency antici-  
4 pates each benefit will be achieved by the proposed  
5 rule;

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

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

14 “(i) require no Government action;

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

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

1           “(D) an assessment of the feasibility of estab-  
2           lishing a regulatory program that operates through  
3           the application of market-based mechanisms;

4           “(E) in any case in which the proposed rule is  
5           based on one or more scientific evaluations or infor-  
6           mation or is subject to the risk assessment require-  
7           ments of subchapter III, a description of actions un-  
8           dertaken by the agency to verify the quality, reliabil-  
9           ity, and relevance of such scientific evaluations or  
10          scientific information in accordance with the risk as-  
11          sessment requirements of subchapter III;

12          “(F) an assessment of the aggregate effect of  
13          the rule on small businesses with fewer than 100  
14          employees, including an assessment of the net em-  
15          ployment effect of the rule; and

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

23          “(d)(1) When the agency publishes a final major rule,  
24          the agency shall also issue and place in the rulemaking  
25          record a final cost-benefit analysis, and shall include a

1 summary of the analysis in the statement of basis and  
2 purpose.

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

4 “(A) a description and comparison of the bene-  
5 fits and costs of the rule and of the reasonable alter-  
6 natives to the rule described in the rulemaking, in-  
7 cluding the market-based mechanisms identified pur-  
8 suant to subsection (c)(2)(D); and

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

11 “(i) whether the benefits of the rule out-  
12 weigh the costs of the rule; and

13 “(ii) whether the rule will provide greater  
14 net benefits to society than any of the alter-  
15 natives described in the rulemaking, including  
16 the market-based incentives identified pursuant  
17 to subsection (c)(2)(D).

18 “(e)(1)(A) The description of the benefits and costs  
19 of a proposed and a final rule required under this section  
20 shall include, to the extent feasible, a quantification or nu-  
21 merical estimate of the quantifiable benefits and costs.  
22 Such quantification or numerical estimate shall be made  
23 in the most appropriate unit of measurement, using com-  
24 parable assumptions, including time periods, and shall  
25 specify the ranges of predictions and shall explain the

1 margins of error involved in the quantification methods  
2 and in the estimates used. An agency shall describe the  
3 nature and extent of the nonquantifiable benefits and  
4 costs of a final rule pursuant to this section in as precise  
5 and succinct a manner as possible.

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

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

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

22 **“§ 623. Decisional criteria**

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

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

5           “(2) the rule will provide greater net benefits to  
6 society than any of the reasonable alternatives iden-  
7 tified pursuant to section 622(c)(2)(C), including the  
8 market-based mechanisms identified pursuant to sec-  
9 tion 622(c)(2)(D).

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

20          **“§ 624. Judicial review**

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

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

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

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

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

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

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

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

1       “(d) Each court with jurisdiction to review final agen-  
2 cy action under the statute granting the agency authority  
3 to conduct the rulemaking shall have jurisdiction to review  
4 findings by any agency under this subchapter and shall  
5 set aside agency action that fails to satisfy the decisional  
6 criteria of section 623. The court shall apply the same  
7 standards of judicial review that apply to the review of  
8 agency findings under the statute granting the agency au-  
9 thority to conduct the rulemaking.

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

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

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

22       “(3) The agency or the President shall grant the peti-  
23 tion if the petition shows that there is a reasonable likeli-  
24 hood that the costs of the major rule outweigh the bene-  
25 fits, or that reasonable questions exist as to whether the

1 rule provides greater net benefits to society than any rea-  
2 sonable alternative to the rule that may be more clearly  
3 resolved through examination pursuant to this subchapter  
4 and subchapter III.

5       “(4) A decision to grant or deny a petition under this  
6 subsection shall be made not later than 180 days after  
7 submittal. A decision to deny a petition shall be subject  
8 to judicial review immediately upon denial as final agency  
9 action under the statute granting the agency authority to  
10 conduct the rulemaking.

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

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

22       “(d)(1) Any person may petition the relevant agency  
23 to withdraw, as contrary to this subchapter, any agency  
24 guidance or general statement of policy that would be a

1 major rule if the guidance or general statement of policy  
2 had been adopted as a rule.

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

6 “(3) The agency shall grant the petition if the peti-  
7 tion shows that there is a reasonable likelihood that the  
8 guidance or general statement of policy would be major  
9 if adopted as a rule.

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

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

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

24 “(a)(1) Beginning on the date of enactment of this  
25 section, all deadlines in statutes that require agencies to

1 propose or promulgate any rule subject to this subchapter  
2 are suspended until such time as the requirements of this  
3 subchapter are satisfied.

4       “(2) Beginning on the date of enactment of this sec-  
5 tion, the jurisdiction of any court of the United States  
6 to enforce any deadline that would require an agency to  
7 propose or promulgate a rule subject to subchapter II of  
8 chapter 5 of title 5, United States Code (as added by this  
9 section), is suspended until such time as the requirements  
10 of this subchapter are satisfied.

11       “(3) In any case in which the failure to promulgate  
12 a rule by a deadline would create an obligation to regulate  
13 through individual adjudications, the obligation to conduct  
14 individual adjudications shall be suspended to allow the  
15 requirements of this subchapter to be satisfied.

16       “(b)(1) Before a major rule takes effect as a final  
17 rule, the agency promulgating such rule shall submit to  
18 the Congress a copy of such rule and a report containing  
19 a concise general statement relating to the rule, including  
20 a complete copy of the cost-benefit analysis, and the pro-  
21 posed effective date of the rule.

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

1           “(A) the later of the date occurring 45 days  
2 after the date on which—

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

5           “(ii) the rule is published in the Federal  
6 Register;

7           “(B) if the Congress passes a joint resolution of  
8 disapproval described under subsection (h) relating  
9 to the rule, and the President signs a veto of such  
10 resolution, the earlier date—

11           “(i) on which either House of Congress  
12 votes and fails to override the veto of the Presi-  
13 dent; or

14           “(ii) occurring 30 session days after the  
15 date on which the Congress received the veto  
16 and objections of the President; or

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

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

24           “(d)(1) Notwithstanding any other provision of this  
25 section (except subject to paragraph (3)), a rule that

1 would not take effect by reason of this section may take  
2 effect if the President makes a determination under para-  
3 graph (2) and submits written notice of such determina-  
4 tion to the Congress.

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

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

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

12 “(C) necessary for national security.

13 “(3) An exercise by the President of the authority  
14 under this subsection shall have no effect on the proce-  
15 dures under subsection (h) or the effect of a joint resolu-  
16 tion of disapproval under this section.

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

20 “(e)(1) Subsection (h) shall apply to any rule that  
21 is published in the Federal Register (as a rule that shall  
22 take effect as a final rule) during the period beginning  
23 on the date occurring 60 days before the date the Con-  
24 gress adjourns sine die through the date on which the suc-  
25 ceeding Congress first convenes.

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

6       “(3) During the period between the date the Congress  
7 adjourns sine die through the date on which the succeed-  
8 ing Congress first convenes, a rule described under para-  
9 graph (1) shall take effect as a final rule as otherwise pro-  
10 vided by law.

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

15       “(g) If the Congress does not enact a joint resolution  
16 of disapproval under subsection (h), no court or agency  
17 may infer any intent of the Congress from any action or  
18 inaction of the Congress with regard to such rule, related  
19 statute, or joint resolution of disapproval.

20       “(h)(1) For purposes of this subsection, the term  
21 ‘joint resolution’ means only a joint resolution introduced  
22 after the date on which the report referred to in subsection  
23 (b) is received by Congress the matter after the resolving  
24 clause of which is as follows: ‘That Congress disapproves  
25 the rule submitted by the \_\_\_\_\_ relating to \_\_\_\_\_,

1 and such rule shall have no force or effect. (The blank  
2 spaces being appropriately filled in.)’.

3 “(2)(A) A resolution described in paragraph (1) shall  
4 be referred to the committees in each House of Congress  
5 with jurisdiction. Such a resolution shall not be reported  
6 before the eighth day after its submission or publication  
7 date.

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

11 “(i) the Congress receives the report submitted  
12 under subsection (b)(1); or

13 “(ii) the rule is published in the Federal Reg-  
14 ister.

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

24 “(4)(A) When the committee to which a resolution  
25 is referred has reported, or when a committee is dis-

1 charged (under paragraph (3)) from further consideration  
2 of, a resolution described in paragraph (1), it shall at any  
3 time thereafter be in order (even though a previous motion  
4 to the same effect has been disagreed to) for any Member  
5 of the respective House to move to proceed to the consider-  
6 ation of the resolution, and all points of order against the  
7 resolution (and against consideration of the resolution)  
8 shall be waived. The motion shall be highly privileged in  
9 the House of Representatives and shall be privileged in  
10 the Senate and shall not be debatable. The motion shall  
11 not subject to amendment, or to a motion to postpone,  
12 or to a motion to proceed to the consideration of other  
13 business. A motion to reconsider the vote by which the  
14 motion is agreed to or disagreed to shall not be in order.  
15 If a motion to proceed to the consideration of the resolu-  
16 tion is agreed to, the resolution shall remain the unfin-  
17 ished business of the respective House until disposed of.

18       “(B) Debate on the resolution, and on all debatable  
19 motions and appeals in connection therewith, shall be lim-  
20 ited to not more than 10 hours, which shall be divided  
21 equally between those favoring and those opposing the res-  
22 olution. A motion further to limit debate shall be in order  
23 and shall not be debatable. An amendment to, or a motion  
24 to postpone, or a motion to proceed to the consideration  
25 of other business, or a motion to recommit the resolution

1 shall not be in order. A motion to reconsider the vote by  
2 which the resolution is agreed to or disagreed to shall not  
3 be in order.

4 “(C) Immediately following the conclusion of the de-  
5 bate on a resolution described in paragraph (1), and a sin-  
6 gle quorum call at the conclusion of the debate if re-  
7 quested in accordance with the rules of the appropriate  
8 House, the vote on final passage of the resolution shall  
9 occur.

10 “(D) Appeals from the decisions of the Chair relating  
11 to the application of the rules of the Senate or the House  
12 of Representatives, as the case may be, to the procedure  
13 relating to a resolution described in paragraph (1) shall  
14 be decided without debate.

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

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

21 “(B) With respect to a resolution described in  
22 paragraph (1) of the House receiving the resolu-  
23 tion—

1           “(i) the procedure in that House shall be  
2           the same as if no resolution had been received  
3           from the other House; but

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

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

7           “(A) as an exercise of the rulemaking power of  
8           the Senate and House of Representatives, respec-  
9           tively, and as such it is deemed to be a part of the  
10          rules of each House, respectively, but applicable only  
11          with respect to the procedure to be followed in that  
12          House in the case of a resolution described in para-  
13          graph (1), and it supersedes other rules only to the  
14          extent that it is inconsistent with such rules; and

15          “(B) with full recognition of the constitutional  
16          right of either House to change the rules (so far as  
17          relating to the procedure of that House) at any time,  
18          in the same manner, and to the same extent as in  
19          the case of any other rule of that House.

20       **“§ 627. Unauthorized rulemakings**

21          “(a) Notwithstanding any other provision of law, be-  
22          ginning on July 1, 1995, any rule that expands Federal  
23          power or jurisdiction beyond the level of regulatory action  
24          needed to satisfy statutory requirements shall be prohib-  
25          ited.



1 of permissible statutory constructions, the reviewing court  
2 shall affirm the agency’s interpretation where the record  
3 on review establishes that—

4 “(A) the agency has correctly identified the  
5 range of permissible statutory constructions;

6 “(B) the interpretation chosen is one that is  
7 within that range; and

8 “(C) the agency has engaged in reasoned deci-  
9 sionmaking in determining that the interpretation,  
10 rather than other permissible constructions of the  
11 statute, is the one that maximizes net benefits to so-  
12 ciety.

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

17 “SUBCHAPTER IV—EXECUTIVE OVERSIGHT

18 “§ 651. **Procedures**

19 “The President shall—

20 “(1) establish procedures for agency compliance  
21 with subchapters II and III; and

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

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

2 “(a) Procedures established pursuant to section 651  
3 shall only be implemented after opportunity for public  
4 comment. Any such procedures shall be consistent with the  
5 prompt completion of rulemaking proceedings.

6 “(b)(1) If procedures established pursuant to section  
7 651 include review of preliminary or final regulatory anal-  
8 yses to ensure that they comply with subchapters II and  
9 III, the time for any such review of a preliminary regu-  
10 latory analysis shall not exceed 30 days following the re-  
11 ceipt of the analysis by the President or by an officer to  
12 whom the authority granted under section 651 has been  
13 delegated pursuant to section 653.

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

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

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

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

24 “(a) The President may delegate the authority grant-  
25 ed by this subchapter to the Vice President or to an officer  
26 within the Executive Office of the President whose ap-

1 pointment has been subject to the advice and consent of  
2 the Senate.

3 “(b)(1) Notice of any delegation, or any revocation  
4 or modification thereof, shall be published in the Federal  
5 Register.

6 “(2) Any notice with respect to a delegation to the  
7 Vice President shall contain a statement by the Vice Presi-  
8 dent that the Vice President will make every reasonable  
9 effort to respond to congressional inquiries concerning the  
10 exercise of the authority delegated under this section.

11 **“§ 654. Applicability**

12 “The authority granted under this subchapter shall  
13 not apply to rules issued by the Nuclear Regulatory Com-  
14 mission.

15 **“§ 655. Judicial review**

16 “The exercise of the authority granted under this  
17 subchapter by the President or by an officer to whom such  
18 authority has been delegated under section 653 shall not  
19 be subject to judicial review in any manner under this  
20 chapter.”.

21 (b) JUDICIAL REVIEW OF REGULATORY FLEXIBILITY  
22 ANALYSIS.—

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

1 **“§ 611. Judicial review**

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

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

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

10 an affected small entity may petition for the judicial re-  
11 view of such certification or analysis in accordance with  
12 this subsection. A court having jurisdiction to review such  
13 rule for compliance with section 553 of this title or under  
14 any other provision of law shall have jurisdiction to review  
15 such certification or analysis.

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

22 “(B) In a case in which an agency delays the issuance  
23 of a final regulatory flexibility analysis pursuant to section  
24 608(b), a petition for judicial review under this subsection  
25 shall be filed not later than—

26 “(i) 1 year; or

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

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

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

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

22          “(B) In a case in which the agency prepared a final  
23          regulatory flexibility analysis, the court may order the  
24          agency to take corrective action consistent with section  
25          604 if the court determines, on the basis of the rulemaking

1 record, that the final regulatory flexibility analysis was  
2 prepared by the agency without complying with section  
3 604.

4 “(6) If, by the end of the 90-day period beginning  
5 on the date of the order of the court pursuant to para-  
6 graph (5) (or such longer period as the court may pro-  
7 vide), the agency fails, as appropriate—

8 “(A) to prepare the analysis required by section  
9 604; or

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

12 the court may stay the rule or grant such other relief as  
13 it deems appropriate.

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

17 “(b) In an action for the judicial review of a rule,  
18 any regulatory flexibility analysis for such rule (including  
19 an analysis prepared or corrected pursuant to subsection  
20 (a)(5)) shall constitute part of the whole record of agency  
21 action in connection with such review.

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

1           (2) EFFECTIVE DATE.—The amendment made  
 2           by paragraph (1) shall take effect on the date of en-  
 3           actment of this Act, except that the judicial review  
 4           authorized by section 611(a) of title 5, United  
 5           States Code (as added by subsection (a)), shall apply  
 6           only to final agency rules issued after the date of en-  
 7           actment of this Act.

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

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

18                   **“CHAPTER 6—THE ANALYSIS OF**  
 19                   **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 RCS—2

S 343 RCS—3

S 343 RCS—4