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**Regulatory Reform-Legislative  
Materials [2]**

1 entities to develop and distribute such guides.

2 (b) SINGLE SOURCE OF INFORMATION.--Agencies shall cooperate to make  
3 available to small entities through a single source of information, the small entity  
4 compliance guides and all other available information on statutory and regulatory  
5 requirements affecting small entities.

6 (c) LIMITATION ON JUDICIAL REVIEW.--~~Except as provided by this~~  
7 ~~subsection, an~~ agency's designation of a small entity compliance guide shall  
8 not be subject to judicial review. ~~In, except that in~~ any civil or administrative  
9 action against a small entity for a violation occurring after the effective date of  
10 this section, the content of the small ~~business~~entity compliance guide may be  
11 considered as evidence of the reasonableness or appropriateness of any proposed  
12 fines, penalties or damages.

13 SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

14 (a) GENERAL.--Whenever appropriate in the interest of administering statutes  
15 and regulations within the jurisdiction of an agency, it shall be the practice of  
16 the agency to answer inquiries by small entities concerning information on and  
17 advice about compliance with such statutes and regulations, interpreting and  
18 applying the law to specific sets of facts supplied by the small entity. In any  
19 civil or administrative action against a small entity, <sup>written</sup> guidance ~~provided~~ given by  
20 an <sup>designated</sup> agency <sup>official</sup> applying the law to facts provided by a small entity may be  
21 considered as evidence of the reasonableness or appropriateness of any proposed  
22 fines, penalties or damages imposed on such small entity.

23 (b) PROGRAM.--Each agency ~~regulating the activities of small entities~~ shall  
24 establish a program for ~~issuing guidance in response~~responding to such inquiries  
25 no later than 1 year after enactment of this section, utilizing existing functions  
26 and personnel of ~~the agency to the~~ agency to the extent practicable.

27 SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT  
28 CENTERS.

1 (A) work with each agency with regulatory authority over small  
 2 businesses to ensure that small business concerns that receive or are  
 3 subject to an audit, on-site inspection, compliance assistance effort, or  
 4 other enforcement related communication or contact by agency personnel  
 5 are provided with a ~~confidential~~ means to comment on <sup>Y</sup>and rate the  
 6 performance of such personnel; Such agency action;

7 (B) establish means to ~~solicit and~~ receive comments from small  
 8 business concerns regarding actions, by agency employees conducting  
 9 compliance or enforcement related activities with respect to the small  
 10 business concern, and maintain the identity of the person and small  
 11 business concern making such comments on a confidential basis; ~~and to~~  
 12 ~~the same extent as employee identities are protected under section 7 of~~  
 13 ~~the Inspector General Act of 1978;~~

14 (C) based on ~~substantiated~~ comments received from small business  
 15 concerns and the Boards, annually report to Congress and affected  
 16 agencies concerning the enforcement activities of agency <sup>es)</sup> ~~personnel~~  
 17 including a rating of the responsiveness to small business of the various  
 18 regional and program offices ~~and personnel~~ of each agency; ~~and~~

19 (D) coordinate and report annually on the activities, findings and  
 20 recommendations of the Boards to the Administration and to the heads of  
 21 affected agencies; and

22 (E) ~~provide the affected agency with an opportunity to comment on~~  
 23 ~~draft reports prepared under paragraph (C) and include a section of the~~  
 24 ~~final report in which the affected agency may make such comments as~~  
 25 ~~are not addressed by the Ombudsman in revisions to the draft.~~

26 (c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--

27 (1) Not later than 180 days after the date of enactment of this section,  
 28 the Administration shall establish a Small Business Regulatory Fairness

1 Board in each regional office of the Small Business Administration.

2 "(2) Each Board established under paragraph (1) shall--

3 "(A) meet at least annually to advise the Ombudsman on matters of  
4 concern to small businesses relating to the enforcement activities of  
5 agencies;

6 "(B) report to the Ombudsman on instances of excessive enforcement  
7 actions of agencies against small business concerns including any findings  
8 or recommendations of the Board as to agency enforcement policy or  
9 practice; and

10 "(C) prior to publication, provide comment on the annual report of the  
11 Ombudsman prepared under subsection (b).

12 "(3) Each Board shall consist of five members appointed by the  
13 Administration, after receiving the recommendations of the chair and ranking  
14 minority member of the Small Business Committees of the House and  
15 Senate.

16 "(4) Members of the Board shall serve for terms of three years or less.

17 "(5) The Administration shall select a chair from among the members of  
18 the Board who shall serve for not more than 2 years as chair.

19 "(6) A majority of the members of the Board shall constitute a quorum  
20 for the conduct of business, but a lesser number may hold hearings.

21 "(d) POWERS OF THE BOARDS.

public meetings

22 "(1) The Board may hold such hearings and collect such information as  
23 appropriate for carrying out this section.

24 "(2) The Board may use the United States mails in the same manner and  
25 under the same conditions as other departments and agencies of the Federal  
26 Government.

27 "(3) The Board may accept donations of services necessary to conduct its  
28 business, provided that the donations and their sources are disclosed by the

1 "§611. Judicial Review

Final

2 "(a)(1) For any rule subject to this chapter, a small entity that is adversely  
3 affected or aggrieved by agency action is entitled to judicial review of agency  
4 compliance with the requirements of this chapter, except the requirements of  
5 sections 602, 603, 609 and 612.

6 "(2) Each court having jurisdiction to review such rule for compliance with  
7 section 553 of this title or under any other provision of law shall have  
8 jurisdiction to review any claims of noncompliance with this chapter, except the  
9 requirements of sections 602, 603, 609 and 612.

10 "(3)(A) A small entity may seek such review during the period beginning on  
11 the date of final agency action and ending one year later, except that where a  
12 provision of law requires that an action challenging a final agency action be  
13 commenced before the expiration of such one year period, such lesser period  
14 shall apply to a petition for judicial review under this section.

15 "(B) In the case where an agency delays the issuance of a final regulatory  
16 flexibility analysis pursuant to section 608(b) of this chapter, a petition for  
17 judicial review under this section shall be filed not later than --

18 (i) one year after the date the analysis is made available to the public,  
19 or

20 (ii) where a provision of law requires that an action challenging a  
21 final agency regulation be commenced before the expiration of the one  
22 year period, the number of days specified in such provision of law that is  
23 after the date the analysis is made available to the public.

24 "(4) If the court determines, on the basis of the rulemaking record, that the  
25 agency action under this chapter was arbitrary, capricious, an abuse of discretion  
26 or otherwise not in accordance with the law, the court shall order the agency to  
27 take corrective action consistent with this chapter, which may include--

Final

28 (A) remanding the rule to the agency, ~~or~~ and

1 for the rule or at the time of publication of the final rule, along with a statement  
2 providing the factual and legal reasons for such certification. The agency shall  
3 provide such certification and statement to the Chief Counsel for Advocacy of  
4 the Small Business Administration.”.

5 (b) Section 612 of title 5, United States Code is amended --

6 (1) in subsection (a), by striking “the committees on the Judiciary of the  
7 Senate and the House of Representatives, the Select Committee on Small  
8 Business of the Senate, and the Committee on Small Business of the House  
9 of Representatives” and inserting “the Committees on the Judiciary and  
10 Small Business of the Senate and House of Representatives”.

11 (2) in subsection (b), by striking “his views with respect to the” and  
12 inserting in lieu thereof, “his or her views with respect to compliance with  
13 this chapter, the adequacy ~~validity~~ of the rulemaking ~~rule~~ with respect  
14 to small entities and the”. effect

15 SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.

16 (a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.--

17 Section 609 of title 5, United States Code is amended --

18 (1) before “techniques,” by inserting “the reasonable use of”;

19 (2) in paragraph (4), after “entities”, by inserting “including soliciting and  
20 receiving comments over computer networks”;

21 (3) by designating the current text as subsection (a); and

22 (4) by adding the following new subsection:

23 “(b) Prior to publication of an initial regulatory flexibility analysis

24 ~~“(1) that an agency is required by this chapter to conduct--~~

25 ~~“(1) a covered agency shall notify the Chief Counsel for Advocacy of the~~  
26 ~~Small Business Administration and provide the Chief Counsel with~~  
27 ~~information on the potential impacts of the Chief Counsel with information~~  
28 ~~on the potential impacts of the proposed rule on small entities and the type~~

AMENDMENT NO. \_\_\_\_

Calendar No. \_\_\_\_

Purpose: to provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES--104th Cong., 2d Sess.**

**S. 942**

To amend the Small Business Act to provide for the designation of an enforcement ombudsman and regional oversight board to monitor the enforcement activities of Federal agencies with respect to small business concerns, to provide for increased understanding of Federal regulations by small entities, to provide for judicial review of the Regulatory Flexibility Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. Bond

Viz:

1 Strike all after the enacting clause and insert the following:

2 **SEC. 1. SHORT TITLE.**

3 This Act may be cited as the "Small Business Regulatory Enforcement Fairness  
4 Act of 1996".

5 **SEC. 2. FINDINGS.**

6 Congress finds that--

7 (1) a vibrant and growing small business sector is critical to creating jobs in  
8 a dynamic economy;

9 (2) small businesses bear a disproportionate share of regulatory costs and  
10 burdens;

1 (3) fundamental changes that are needed in the regulatory and enforcement  
2 culture of federal agencies to make agencies more responsive to small business  
3 can be made without compromising the statutory missions of the agencies;

4 (4) three of the top recommendations of the White House Conference on  
5 Small Business involve reforms to the way government regulations are  
6 developed and enforced, and reductions in government paperwork  
7 requirements;

8 (5) the requirements of the Regulatory Flexibility Act have too often been  
9 ignored by government agencies, resulting in greater regulatory burdens on  
10 small entities than necessitated by statute; and

11 (6) small entities should be given the opportunity to seek judicial review of  
12 agency actions required by the Regulatory Flexibility Act.

13 **SEC. 3. PURPOSES.**

14 The purposes of this act are--

15 (1) to implement certain recommendations of the 1995 White House  
16 Conference on Small Business regarding the development and enforcement of  
17 Federal regulations;

18 (2) to provide for judicial review of the Regulatory Flexibility Act;

19 (3) to encourage the effective participation of small businesses in the  
20 Federal regulatory process;

21 (4) to simplify the language of Federal regulations affecting small  
22 businesses;

23 (5) to develop more accessible sources of information on regulatory and  
24 reporting requirements for small businesses;

25 (6) to create a more cooperative regulatory environment among agencies  
26 and small businesses that is less punitive and more solution-oriented; and

1 (7) to make Federal regulators more accountable for their enforcement  
2 actions by providing small entities with a meaningful opportunity for redress of  
3 excessive enforcement activities.

4 **SEC. 4. EFFECTIVE DATE.**

5 This Act shall become effective on the date 90 days after enactment, except  
6 that the amendment made by section 402 shall not apply to interpretive rules for  
7 which a notice of proposed rule making was issued before the date of enactment.

8 **TITLE I--REGULATORY COMPLIANCE**

9 **SIMPLIFICATION**

10 **SEC. 101. DEFINITIONS.**

11 For purposes of this Act--

12 (1) the terms "rule" and "small entity" have same meanings as in section  
13 601 of title 5, United States Code; and

14 (2) the term "agency" has the same meaning as in section 551 of title 5,  
15 United States Code.

16 (3) the term "small entity compliance guide" means a document designated  
17 as such by an agency.

18 **SEC. 102. COMPLIANCE GUIDES.**

19 (a) COMPLIANCE GUIDE.--For each rule or group of related rules for which an  
20 agency is required to prepare a final regulatory flexibility analysis under section  
21 604 of title 5, United States Code, the agency shall publish one or more guides to  
22 assist small entities in complying with the rule, and shall designate such  
23 publications as "small entity compliance guides." The guides shall explain the  
24 actions a small entity is required to take to comply with a rule or group of rules.  
25 The agency shall, in its sole discretion, taking into account the subject matter of  
26 the rule and the language of relevant statutes, ensure that the guide is written using

1 sufficiently plain language likely to be understood by affected small entities.  
2 Agencies may prepare separate guides covering groups or classes of similarly  
3 affected small entities, and may cooperate with associations of small entities to  
4 develop and distribute such guides.

5 (b) SINGLE SOURCE OF INFORMATION.--Agencies shall cooperate to make  
6 available to small entities through a single source of information, the small entity  
7 compliance guides and all other available information on statutory and regulatory  
8 requirements affecting small entities.

9 (c) LIMITATION ON JUDICIAL REVIEW.--An agency's small entity compliance  
10 guide shall not be subject to judicial review, except that in any civil or  
11 administrative action against a small entity for a violation occurring after the  
12 effective date of this section, the content of the small entity compliance guide may  
13 be considered as evidence of the reasonableness or appropriateness of any  
14 proposed fines, penalties or damages.

15 **SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.**

16 (a) GENERAL.--Whenever appropriate in the interest of administering statutes  
17 and regulations within the jurisdiction of an agency, it shall be the practice of the  
18 agency to answer inquiries by small entities concerning information on and advice  
19 about compliance with such statutes and regulations, interpreting and applying the  
20 law to specific sets of facts supplied by the small entity. In any civil or  
21 administrative action against a small entity, guidance given by an agency applying  
22 the law to facts provided by a small entity may be considered as evidence of the  
23 reasonableness or appropriateness of any proposed fines, penalties or damages  
24 imposed on such small entity.

25 (b) PROGRAM.--Each agency regulating the activities of small entities shall  
26 establish a program for responding to such inquiries no later than 1 year after

1 enactment of this section, utilizing existing functions and personnel of the agency  
2 to the extent practicable.

3 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT CENTERS.**

4 Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is amended--

5 (1) in subparagraph (O), by striking "and" at the end;

6 (2) in subparagraph (P), by striking the period at the end and inserting a  
7 semicolon; and

8 (3) by inserting after subparagraph (P) the following new subparagraphs:

9 “(Q) providing assistance to small business concerns regarding regulatory  
10 requirements, including providing training with respect to cost-effective regulatory  
11 compliance;

12 “(R) developing informational publications, establishing resource centers of  
13 reference materials, and distributing compliance guides published under section  
14 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to  
15 small business concerns; and

16 “(S) developing programs to provide confidential onsite assessments and  
17 recommendations regarding regulatory compliance to small business concerns and  
18 assisting small business concerns in analyzing the business development issues  
19 associated with regulatory implementation and compliance measures.”.

20 **SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.**

21 The Manufacturing Technology Centers and other similar extension centers  
22 administered by the National Institute of Standards and Technology of the  
23 Department of Commerce shall, as appropriate, provide the assistance regarding  
24 regulatory requirements, develop and distribute information and guides and  
25 develop the programs to provide confidential onsite assessments and  
26 recommendations regarding regulatory compliance described in Section 104 of this

1 Act with respect to small business development centers.

2 **SEC. 106. COOPERATION ON GUIDANCE.**

3 Agencies may, to the extent resources are available and where appropriate, in  
4 cooperation with the states, develop guides that fully integrate requirements of  
5 both federal and state regulations where regulations within an agency's are of  
6 interest at the federal and state levels impact small businesses. Where regulations  
7 vary among the states, separate guides may be created for separate states.

8 **TITLE II--REGULATORY ENFORCEMENT**

9 **REFORMS**

10 **SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT**  
11 **OMBUDSMAN.**

12 The Small Business Act (15 U.S.C. 631 et seq.) is amended--

13 (1) by redesignating section 30 as section 31; and

14 (2) by inserting after section 29 the following new section:

15 **"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.**

16 "(a) DEFINITIONS.--For purposes of this section, the term--

17 "(1) "Board" means a Regional Small Business Regulatory Fairness Board  
18 established under subsection (c); and

19 "(2) "Ombudsman" means the Small Business and Agriculture Regulatory  
20 Enforcement Ombudsman designated under subsection (b).

21 "(b) SBA ENFORCEMENT OMBUDSMAN.--

22 "(1) Not later than 180 days after the date of enactment of this section, the  
23 Administration shall designate a Small Business and Agriculture Regulatory  
24 Enforcement Ombudsman utilizing existing personnel of the Small Business  
25 Administration to the extent practicable. Other agencies shall assist the  
26 Ombudsman and take actions as necessary to ensure compliance with the

1 requirements of this section. Nothing in this section is intended to replace or  
2 diminish the activities of any Ombudsman or similar office in any other  
3 agency.

4 “(2) The Ombudsman shall--

5 (A) work with each agency with regulatory authority over small  
6 businesses to ensure that small business concerns that receive or are subject  
7 to an audit, on-site inspection, compliance assistance effort, or other  
8 enforcement related communication or contact by agency personnel are  
9 provided with a means to comment on and rate the performance of such  
10 personnel;

11 “(B) establish means to receive comments from small business concerns  
12 regarding actions by agency employees conducting compliance or  
13 enforcement related activities with respect to the small business concern,  
14 and maintain the identity of the person and small business concern making  
15 such comments on a confidential basis to the same extent as employee  
16 identities are protected under section 7 of the Inspector General Act of  
17 1978;

18 “(C) based on substantiated comments received from small business  
19 concerns and the Boards, annually report to Congress and affected agencies  
20 concerning the enforcement activities of agency personnel including a  
21 rating of the responsiveness to small business of the various regional and  
22 program offices and personnel of each agency;

23 “(D) coordinate and report annually on the activities, findings and  
24 recommendations of the Boards to the Administration and to the heads of  
25 affected agencies; and

26 “(E) provide the affected agency with an opportunity to comment on

1 draft reports prepared under paragraph (C) and include a section of the final  
2 report in which the affected agency may make such comments as are not  
3 addressed by the Ombudsman in revisions to the draft.

4 “(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--

5 “(1) Not later than 180 days after the date of enactment of this section, the  
6 Administration shall establish a Small Business Regulatory Fairness Board in  
7 each regional office of the Small Business Administration.

8 “(2) Each Board established under paragraph (1) shall--

9 “(A) meet at least annually to advise the Ombudsman on matters of  
10 concern to small businesses relating to the enforcement activities of  
11 agencies;

12 “(B) report to the Ombudsman on instances of excessive enforcement  
13 actions of agencies against small business concerns including any findings  
14 or recommendations of the Board as to agency enforcement policy or  
15 practice; and

16 “(C) prior to publication, provide comment on the annual report of the  
17 Ombudsman prepared under subsection (b).

18 “(3) Each Board shall consist of five members appointed by the  
19 Administration, after receiving the recommendations of the chair and ranking  
20 minority member of the Small Business Committees of the House and Senate.

21 “(4) Members of the Board shall serve for terms of three years or less.

22 “(5) The Administration shall select a chair from among the members of the  
23 Board who shall serve for not more than 2 years as chair.

24 “(6) A majority of the members of the Board shall constitute a quorum for  
25 the conduct of business, but a lesser number may hold hearings.

26 “(d) POWERS OF THE BOARDS.

1           “(1) The Board may hold such hearings and collect such information as  
2 appropriate for carrying out this section.

3           “(2) The Board may use the United States mails in the same manner and  
4 under the same conditions as other departments and agencies of the Federal  
5 Government.

6           “(3) The Board may accept donations of services necessary to conduct its  
7 business, provided that the donations and their sources are disclosed by the  
8 Board.

9           “(4) Members of the Board shall serve without compensation, provided that,  
10 members of the Board shall be allowed travel expenses, including per diem in  
11 lieu of subsistence, at rates authorized for employees of agencies under  
12 subchapter I of chapter 57 of title 5, United States Code, while away from their  
13 homes or regular places of business in the performance of services for the  
14 Board.”.

15 **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.**

16       (a) IN GENERAL.--Each agency regulating the activities of small entities shall  
17 establish a policy or program within 1 year of enactment of this section to provide  
18 for the reduction, and under appropriate circumstances for the waiver, of civil  
19 penalties for violations of a statutory or regulatory requirement by a small entity.

20       (b) CONDITIONS AND EXCEPTIONS.--Policies or programs established under this  
21 section shall contain, as appropriate, conditions or exclusion such as --

22           (1) requiring the small entity to correct the violation within a reasonable  
23 correction period;

24           (2) limiting the applicability to violations discovered by the small entity  
25 through participation in a compliance assistance or audit program operated or  
26 supported by the agency or a state, or through a compliance audit resulting in

1 disclosure of the violation;

2 (3) excluding small entities that have been subject to multiple enforcement  
3 actions by the agency;

4 (4) excluding violations involving willful or criminal conduct;

5 (5) excluding violations that pose serious health, safety or environmental  
6 threats or risk of serious injury; and

7 (6) requiring a good faith effort to comply with the law.

8 (d) REPORTING.--Agencies shall report to Congress no later than 2 years from  
9 the effective date on the scope of their program or policy, the number of  
10 enforcement actions against small entities that qualified or failed to qualify for the  
11 program or policy, and total amount of penalty reduction or waiver.

## 12 **TITLE III--EQUAL ACCESS TO JUSTICE ACT**

### 13 **AMENDMENTS**

#### 14 **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

15 Section 504 of title 5, United States Code, is amended --

16 (1) in subsection (b), by striking "\$75" in subparagraph (b)(1) and inserting  
17 "\$125"; and

18 (2) in subsection (a) by adding the following new paragraph:

19 "(4) In an adversary adjudication brought by an agency, an adjudicative officer  
20 of the agency shall award attorneys fees and other expenses to a party or a small  
21 entity, as defined in Section 601, if the decision of the adjudicative officer is  
22 disproportionately less favorable than an express demand by the agency, unless the  
23 party or small entity has committed a willful violation of law or otherwise acted in  
24 bad faith."

#### 25 **SEC. 302. JUDICIAL PROCEEDINGS.**

26 Section 2412 of title 28, United States Code, is amended--

1 (1) in paragraph (d), by striking “\$75” in subparagraph (2)(A) and inserting  
2 “\$125”; and

3 (2) in paragraph (d)(1) by adding the following new subparagraph:

4 “(D) In a civil action brought by the United States, a court shall award  
5 attorneys fees and other expenses to a party or a small entity, as defined in Section  
6 601 of title 5 United States Code, if the judgment finally obtained by the United  
7 States is disproportionately less favorable than an express demand by the United  
8 States, unless the party or small entity has committed a willful violation of law or  
9 otherwise acted in bad faith. For purposes of this subparagraph, an “express  
10 demand” shall not include a recitation in the complaint of the maximum statutory  
11 penalty.”

## 12 **TITLE IV--REGULATORY FLEXIBILITY ACT**

### 13 **AMENDMENTS**

#### 14 **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

15 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,  
16 United States Code, is amended--

17 (1) by inserting after “proposed rule”, the phrase “, or publishes a notice of  
18 proposed rule making for a proposed interpretive rule making of general  
19 applicability”; and

20 (2) by inserting at the end of the subsection, the following new sentence:

21 “In the case of interpretive rule making involving the internal revenue laws of  
22 the United States, this section applies only to regulations as that term is used in  
23 section 7805 of the Internal Revenue Code of 1986 and only to the extent such  
24 regulation imposes a collection of information, as that term is defined in the  
25 Paperwork Reduction Act of 1995) on small entities.”

26 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5, United

1 States Code, is amended --

2 (1) in subsection (a) to read as follows:

3 “(a) When an agency promulgates a final rule under section 553 of this title,  
4 after being required by that section or any other law to publish a general notice of  
5 proposed rulemaking, or otherwise publishing an initial regulatory flexibility  
6 analysis, the agency shall prepare a final regulatory flexibility analysis. Each final  
7 regulatory flexibility analysis shall contain--

8 “(1) a succinct statement of the need for, and objectives of, the rule;

9 “(2) a summary of the significant issues raised by the public comments in  
10 response to the initial regulatory flexibility analysis, a summary of the assessment  
11 of the agency of such issues, and a statement of any changes made in the proposed  
12 rule as a result of such comments;

13 “(3) a description of, and an estimate of the number of, small entities to which  
14 the rule will apply or an explanation of why no such estimate is available;

15 “(4) a description of the projected reporting, record keeping and other  
16 compliance requirements of the rule, including an estimate of the classes of small  
17 entities which will be subject to the requirement and the type of professional skills  
18 necessary for preparation of the report or record; and

19 “(5) a description of the steps the agency has taken to minimize the significant  
20 economic impact on small entities consistent with the stated objectives of  
21 applicable statutes, including a statement of the factual, policy, and legal reasons  
22 for selecting the alternative adopted in the final rule and why each one of the other  
23 significant alternatives to the rule considered by the agency which effect the  
24 impact on small business was rejected.”; and

25 (2) in subsection (b), by striking “at the time” and all that follows and  
26 inserting “such analysis or a summary thereof”.

1     **SEC. 402. JUDICIAL REVIEW.**

2           Section 611 of title 5, United States Code, is amended to read as follows:

3     **“§611. Judicial Review**

4           “(a)(1) For any rule subject to this chapter, a small entity that is adversely  
5 affected or aggrieved by agency action is entitled to judicial review of agency  
6 compliance with the requirements of this chapter, except the requirements of  
7 sections 602, 603, 609 and 612.

8           “(2) Each court having jurisdiction to review such rule for compliance with  
9 section 553 of this title or under any other provision of law shall have jurisdiction  
10 to review any claims of noncompliance with this chapter, except the requirements  
11 of sections 602, 603, 609 and 612.

12           “(3)(A) A small entity may seek such review during the period beginning on  
13 the date of final agency action and ending one year later, except that where a  
14 provision of law requires that an action challenging a final agency action be  
15 commenced before the expiration of such one year period, such lesser period shall  
16 apply to a petition for judicial review under this section.

17           “(B) In the case where an agency delays the issuance of a final regulatory  
18 flexibility analysis pursuant to section 608(b) of this chapter, a petition for  
19 judicial review under this section shall be filed not later than --

20                   (i) one year after the date the analysis is made available to the public, or

21                   (ii) where a provision of law requires that an action challenging a final  
22 agency regulation be commenced before the expiration of the one year  
23 period, the number of days specified in such provision of law that is after  
24 the date the analysis is made available to the public.

25           “(4) If the court determines, on the basis of the rulemaking record, that the  
26 agency action under this chapter was arbitrary, capricious, an abuse of discretion

1 or otherwise not in accordance with the law, the court shall order the agency to  
2 take corrective action consistent with this chapter, which may include--

3 (A) remanding the rule to the agency, and

4 (B) deferring the enforcement of the rule against small entities, unless the  
5 court finds good cause for continuing the enforcement of the rule pending the  
6 completion of the corrective action.

7 “(5) Nothing in this subsection shall be construed to limit the authority of any  
8 court to stay the effective date of any rule or provision thereof under any other  
9 provision of law or to grant any other relief in addition to the requirements of this  
10 section.

11 “(b) In an action for the judicial review of a rule, the regulatory flexibility  
12 analysis for such rule, including an analysis prepared or corrected pursuant to  
13 paragraph (a)(4), shall constitute part of the entire record of agency action in  
14 connection with such review.

15 “(c) Except as otherwise required by this chapter, the court shall apply the same  
16 standards of judicial review that govern the review of agency findings under the  
17 statute granting the agency authority to conduct a rule making.

18 “(d) Compliance or noncompliance by an agency with the provisions of this  
19 chapter shall be subject to judicial review only in accordance with this section.

20 “(e) Nothing in this section bars judicial review of any other impact statement  
21 or similar analysis required by any other law if judicial review of such statement or  
22 analysis is otherwise permitted by law.”

23 **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

24 (a) Section 605(b) of title 5, United States Code, is amended to read as follows:

25 “(b) Sections 603 and 604 of this title shall not apply to any proposed or final  
26 rule if the head of the agency certifies that the rule will not, if promulgated, have a

1 significant economic impact on a substantial number of small entities. If the head  
2 of the agency makes a certification under the preceding sentence, the agency shall  
3 publish such certification in the Federal Register, at the time of publication of  
4 general notice of proposed rule making for the rule or at the time of publication of  
5 the final rule, along with a statement providing the factual and legal reasons for  
6 such certification. The agency shall provide such certification and statement to the  
7 Chief Counsel for Advocacy of the Small Business Administration.”.

8 (b) Section 612 of title 5, United States Code is amended --

9 (1) in subsection (a), by striking “the committees on the Judiciary of the  
10 Senate and the House of Representatives, the Select Committee on Small  
11 Business of the Senate, and the Committee on Small Business of the House of  
12 Representatives” and inserting “the Committees on the Judiciary and Small  
13 Business of the Senate and House of Representatives”.

14 (2) in subsection (b), by striking “his views with respect to the” and  
15 inserting in lieu thereof, “his or her views with respect to compliance with this  
16 chapter, the validity of the rule with respect to small entities and the”.

17 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

18 (a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.-- Section  
19 609 of title 5, United States Code is amended --

20 (1) before “techniques,” by inserting “the reasonable use of”;

21 (2) in paragraph (4), after “entities”, by inserting “including soliciting and  
22 receiving comments over computer networks”;

23 (3) by designating the current text as subsection (a); and

24 (4) by adding the following new subsection:

25 “(b) Prior to publication of an initial regulatory flexibility analysis that an  
26 agency is required by this chapter to conduct--

1           “(1) a covered agency shall notify the Chief Counsel for Advocacy of the  
2 Small Business Administration and provide the Chief Counsel with information  
3 on the potential impacts of the proposed rule on small entities and the type of  
4 small entities that might be affected;

5           “(2) the Chief Counsel shall identify individuals representative of affected  
6 small entities for the purpose of obtaining advice and recommendations from  
7 those individuals about the potential impacts of the proposed rule;

8           “(3) the agency shall convene a review panel for such rule consisting  
9 wholly of full time federal employees of the office within the agency  
10 responsible for carrying out the proposed rule, the Office of Information and  
11 Regulatory Affairs within the Office of Management and Budget, and the Chief  
12 Counsel;

13           “(4) the panel shall review any material the agency has prepared in  
14 connection with this chapter, including any draft proposed rule, collect advice  
15 and recommendations of the small entity representatives identified by the  
16 agency after consultation with the Chief Counsel, on issues related to  
17 subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

18           “(5) the review panel shall report on the comments of the small entity  
19 representatives and its findings as to issues related to subsections 603(b),  
20 paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made  
21 public as part of the rulemaking record; and

22           “(6) where appropriate, the agency shall modify the proposed rule, the  
23 initial regulatory flexibility analysis or the decision on whether an initial  
24 regulatory flexibility analysis is required.

25           “(c) Prior to publication of a final regulatory flexibility analysis that a covered  
26 agency is required by this chapter to conduct--

1           “(1) an agency shall reconvene the review panel established under  
2 paragraph (b)(3), or if no initial regulatory flexibility analysis was published,  
3 undertake the actions described in paragraphs (b)(1) through (3);

4           “(2) the panel shall review any material the agency has prepared in  
5 connection with this chapter, including any draft rule, collect the advice and  
6 recommendations of the small entity representatives identified by the agency  
7 after consultation with the Chief Counsel, on issues related to subsection  
8 604(a), paragraphs (3), (4) and (5);

9           “(3) the review panel shall report on the comments of the small entity  
10 representatives and its findings as to issues related to subsections 604(a),  
11 paragraphs (3), (4) and (5), provided that such report shall be made public as  
12 part of the rulemaking record; and

13           “(4) where appropriate, the agency shall modify the final rule, the final  
14 regulatory flexibility analysis or the decision on whether a final regulatory  
15 flexibility analysis is required.

16           “(d) An agency may in its discretion apply subsections (b) and (c) to rules that  
17 the agency intends to certify under subsection 605(b), but the agency believes may  
18 have a greater than de minimis impact on a substantial number of small entities.

19           “(e) for purposes of this section, the term covered agency means the  
20 Environmental Protection Agency and the Occupational Health and Safety  
21 Administration of the Department of Labor.”.

22           (b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.--Not later than 30 days after  
23 the date of enactment of this Act, the head of each agency that has conducted a  
24 final regulatory flexibility analysis shall designate a small business advocacy  
25 chairperson using existing personnel to the extent possible, to be responsible for  
26 implementing this section and to act as permanent chair of the agency’s review

1 panels established pursuant to this section.

2

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: to provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES—104th Cong., 2d Sess.**

**S. 942**

To amend the Small Business Act to provide for the designation of an enforcement ombudsman and regional oversight board to monitor the enforcement activities of Federal agencies with respect to small business concerns, to provide for increased understanding of Federal regulations by small entities, to provide for judicial review of the Regulatory Flexibility Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. Bond

Viz:

1 Strike all after the enacting clause and insert the following:

2 **SEC. 1. SHORT TITLE.**

3 This Act may be cited as the "Small Business Regulatory Enforcement  
4 Fairness Act of 1996".

5 **SEC. 2. FINDINGS.**

6 Congress finds that--

7 (1) a vibrant and growing small business sector is critical to creating jobs in  
8 a dynamic economy;

9 (2) small businesses bear a disproportionate share of regulatory costs and  
10 burdens;

11 (3) fundamental changes that are needed in the regulatory and enforcement

1 culture of federal agencies to make agencies more responsive to small business  
2 can be made without compromising the statutory missions of the agencies;

3 (4) three of the top recommendations of the White House Conference on  
4 Small Business involve reforms to the way government regulations are  
5 developed and enforced, and reductions in government paperwork  
6 requirements;

7 (5) the requirements of the Regulatory Flexibility Act have too often been  
8 ignored by government agencies, resulting in greater regulatory burdens on  
9 small entities than necessitated by statute; and

10 (6) small entities should be given the opportunity to seek judicial review of  
11 agency actions required by the Regulatory Flexibility Act.

12 **SEC. 3. PURPOSES.**

13 The purposes of this act are--

14 (1) to implement certain recommendations of the 1995 White House  
15 Conference on Small Business regarding the development and enforcement  
16 of Federal regulations;

17 (2) to provide for judicial review of the Regulatory Flexibility Act;

18 (3) to encourage the effective participation of small businesses in the  
19 Federal regulatory process;

20 (4) to simplify the language of Federal regulations affecting small  
21 businesses;

22 (5) to develop more accessible sources of information on regulatory and  
23 reporting requirements for small businesses;

24 (6) to create a more cooperative regulatory environment among agencies  
25 and small businesses that is less punitive and more solution-oriented; and

26 (7) to make Federal regulators more accountable for their enforcement  
27 actions by providing small entities with a meaningful opportunity for redress  
28 of excessive enforcement activities.

1    **SEC. 4. EFFECTIVE DATE.**

2       This Act shall become effective on the date 90 days after enactment, ~~except~~  
3 ~~that the amendment made by section 402 shall not apply to interpretive rules for~~  
4 ~~which a notice of proposed rule making was issued before the date of~~  
5 ~~enactment.~~

6    **TITLE I--REGULATORY COMPLIANCE**

7    **SIMPLIFICATION**

8    **SEC. 101. DEFINITIONS.**

9       For purposes of this Act--

10       (1) the terms "rule" and "small entity" have same meanings as in section  
11       601 of title 5, United States Code; and

12       (2) the term "agency" has the same meaning as in section 551 of title 5,  
13       United States Code.

14       (3) the term "small entity compliance guide" means a document  
15       designated as such by an agency.

16    **SEC. 102. COMPLIANCE GUIDES.**

17       (a) COMPLIANCE GUIDE.--For each rule or group of related rules for which  
18       an agency is required to prepare a final regulatory flexibility analysis under  
19       section 604 of title 5, United States Code, the agency shall publish one or more  
20       guides to assist small entities in complying with the rule, and shall designate  
21       such publications as "small entity compliance guides." The guides shall explain  
22       the actions a small entity is required to take to comply with a rule or group of  
23       rules. The agency shall, in its sole discretion, ~~taking into account the subject~~  
24 ~~matter of the rule and the language of relevant statutes,~~ ensure that the guide is  
25       written using sufficiently plain language ~~likely~~ to be understood by affected  
26       small entities. Agencies may prepare separate guides covering groups or classes  
27       of similarly affected small entities, and may cooperate with associations of small

1 entities to develop and distribute such guides.

2 (b) SINGLE SOURCE OF INFORMATION.--Agencies shall cooperate to make  
3 available to small entities through a single source of information, the small entity  
4 compliance guides and all other available information on statutory and regulatory  
5 requirements affecting small entities.

6 (c) LIMITATION ON JUDICIAL REVIEW.--~~Except as provided by this~~  
7 ~~subsection, an~~ agency's designation of a small entity compliance guide shall  
8 not be subject to judicial review. ~~In, except that in~~ any civil or administrative  
9 action against a small entity for a violation occurring after the effective date of  
10 this section, the content of the small ~~business entity compliance~~ guide may be  
11 considered as evidence of the reasonableness or appropriateness of any proposed  
12 fines, penalties or damages.

### 13 SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.

14 (a) GENERAL.--Whenever appropriate in the interest of administering statutes  
15 and regulations within the jurisdiction of an agency, it shall be the practice of  
16 the agency to answer inquiries by small entities concerning information on and  
17 advice about compliance with such statutes and regulations, interpreting and  
18 applying the law to specific sets of facts supplied by the small entity. In any  
19 civil or administrative action against a small entity, guidance ~~provided given~~ by  
20 an agency ~~applying the law to facts provided by~~ a small entity may be  
21 considered as evidence of the reasonableness or appropriateness of any proposed  
22 fines, penalties or damages imposed on such small entity.

23 (b) PROGRAM.--Each agency ~~regulating the activities of small entities~~ shall  
24 establish a program for ~~issuing guidance in response~~ ~~responding~~ to such inquiries  
25 no later than 1 year after enactment of this section, utilizing existing functions  
26 and personnel of ~~the agency to the~~ ~~agency to the~~ extent practicable.

### 27 SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT 28 CENTERS.

1 Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is  
2 amended--

3 (1) in subparagraph (O), by striking "and" at the end;

4 (2) in subparagraph (P), by striking the period at the end and inserting a  
5 semicolon; and

6 (3) by inserting after subparagraph (P) the following new subparagraphs:

7 "(Q) providing assistance to small business concerns regarding regulatory  
8 requirements, including providing training with respect to cost-effective  
9 regulatory compliance;

10 "(R) developing informational publications, establishing resource centers of  
11 reference materials, and distributing compliance guides published under section  
12 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to  
13 small business concerns; and

14 "(S) developing programs to provide confidential onsite assessments and  
15 recommendations regarding regulatory compliance to small business concerns  
16 and assisting small business concerns in analyzing the business development  
17 issues associated with regulatory implementation and compliance measures."

18 **SEC. 105. MANUFACTURING TECHNOLOGY CENTERS.**

19 The Manufacturing Technology Centers and other similar extension centers  
20 administered by the National ~~Institute~~Institute of Standards and Technology of  
21 the Department of Commerce shall, as appropriate, provide the assistance  
22 regarding regulatory requirements, develop and distribute information and guides  
23 and develop the programs to provide ~~confidential~~confidential onsite  
24 assessments and recommendations regarding regulatory compliance described in  
25 Section 104 of this Act ~~with respect to small business development centers~~.

26 **SEC. 106. COOPERATION ON GUIDANCE.**

27 ~~Agencies may, to the extent resources are available and where appropriate, in~~  
28 ~~cooperation with the states, develop guides that fully integrate requirements of~~

1 ~~both federal and state regulations where regulations within an agency's are of~~  
2 ~~interest at the federal and state levels impact small businesses. Where~~  
3 ~~regulations vary among the states, separate guides may be created for separate~~  
4 ~~states~~

## 5 **TITLE II--REGULATORY ENFORCEMENT**

### 6 **REFORMS**

#### 7 **SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT**

##### 8 **OMBUDSMAN.**

9 The Small Business Act (15 U.S.C. 631 et seq.) is amended--

10 (1) by redesignating section 30 as section 31; and

11 (2) by inserting after section 29 the following new section:

##### 12 **"SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.**

13 "(a) DEFINITIONS.--For purposes of this section, the term--

14 "(1) "Board" means a Regional Small Business Regulatory Fairness  
15 Board established under subsection (c); and

16 "(2) "Ombudsman" means the Small Business and Agriculture Regulatory  
17 Enforcement Ombudsman designated under subsection (b).

18 "(b) SBA ENFORCEMENT OMBUDSMAN.--

19 "(1) Not later than 180 days after the date of enactment of this section,  
20 the Administration shall designate a Small Business and Agriculture  
21 Regulatory Enforcement Ombudsman utilizing existing personnel of the  
22 ~~Small Business Administration~~ to the extent practicable. Other agencies  
23 shall assist the Ombudsman and take actions as necessary to ensure  
24 compliance with the requirements of this section. Nothing in this section is  
25 intended to replace or diminish the activities of any Ombudsman or similar  
26 office in any other agency.

27 "(2) The Ombudsman shall--

1 (A) work with each agency with regulatory authority over small  
2 businesses to ensure that small business concerns that receive or are  
3 subject to an audit, on-site inspection, compliance assistance effort, or  
4 other enforcement related communication or contact by agency personnel  
5 are provided with a ~~confidential~~ means to comment on and rate the  
6 performance of such personnel;

7 "(B) establish means to ~~solicit and receive~~ comments from small  
8 business concerns regarding actions by agency employees conducting  
9 compliance or enforcement related activities with respect to the small  
10 business concern, and maintain the identity of the person and small  
11 business concern making such comments on a confidential basis; ~~and to~~  
12 ~~the same extent as employee identities are protected under section 7 of~~  
13 ~~the Inspector General Act of 1978;~~

14 "(C) based on ~~substantiated~~ comments received from small business  
15 concerns and the Boards, annually report to Congress and affected  
16 agencies concerning the enforcement activities of agency personnel  
17 including a rating of the responsiveness to small business of the various  
18 regional and program offices and personnel of each agency; ~~and~~

19 "(D) coordinate and report annually on the activities, findings and  
20 recommendations of the Boards to the Administration and to the heads of  
21 affected agencies; ~~and~~

22 ~~"(E) provide the affected agency with an opportunity to comment on~~  
23 ~~draft reports prepared under paragraph (C) and include a section of the~~  
24 ~~final report in which the affected agency may make such comments as~~  
25 ~~are not addressed by the Ombudsman in revisions to the draft.~~

26 "(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--

27 "(1) Not later than 180 days after the date of enactment of this section,  
28 the Administration shall establish a Small Business Regulatory Fairness

1 Board in each regional office of the Small Business Administration.  
2 “(2) Each Board established under paragraph (1) shall--  
3 “(A) meet at least annually to advise the Ombudsman on matters of  
4 concern to small businesses relating to the enforcement activities of  
5 agencies;  
6 “(B) report to the Ombudsman on instances of excessive enforcement  
7 actions of agencies against small business concerns including any findings  
8 or recommendations of the Board as to agency enforcement policy or  
9 practice; and  
10 “(C) prior to publication, provide comment on the annual report of the  
11 Ombudsman prepared under subsection (b).  
12 “(3) Each Board shall consist of five members appointed by the  
13 Administration, after receiving the recommendations of the chair and ranking  
14 minority member of the Small Business Committees of the House and  
15 Senate.  
16 “(4) Members of the Board shall serve for terms of three years or less.  
17 “(5) The Administration shall select a chair from among the members of  
18 the Board who shall serve for not more than 2 years as chair.  
19 “(6) A majority of the members of the Board shall constitute a quorum  
20 for the conduct of business, but a lesser number may hold hearings.  
21 “(d) POWERS OF THE BOARDS.  
22 “(1) The Board may hold such hearings and collect such information as  
23 appropriate for carrying out this section.  
24 “(2) The Board may use the United States mails in the same manner and  
25 under the same conditions as other departments and agencies of the Federal  
26 Government.  
27 “(3) The Board may accept donations of services necessary to conduct its  
28 business, ~~provided that the donations and their sources are disclosed by the~~

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~~Board.~~

“(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter 1 of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Board.”.

**SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT ACTIONS.**

(a) IN GENERAL.--Each agency regulating the activities of small entities shall establish a policy or program ~~within 1 year of enactment of this section to~~ provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.

(b) CONDITIONS AND EXCEPTIONS.--Policies or programs established under this section ~~may shall~~ contain, ~~as appropriate,~~ conditions or ~~exceptions~~ ~~exclusion~~ such as --

(1) requiring the small entity to correct the violation within a reasonable correction period;

(2) limiting the applicability to violations discovered by the small entity through participation in a compliance assistance or audit program operated or supported by the agency or a state, or through a compliance audit resulting in disclosure of the violation;

(3) ~~exempting~~ ~~excluding~~ small entities that have been subject to multiple enforcement actions by the agency;

(4) ~~exempting~~ ~~excluding~~ violations involving willful or criminal conduct; and

(5) ~~exempting~~ ~~excluding~~ violations that pose serious health, safety or

1 environmental threats or risk of serious injury ~~and~~

2 ~~(c) requiring a good faith effort to comply with the law.~~

3 ~~(d) REPORTING.—Agencies shall report to Congress no later than 2 years~~  
4 ~~from the effective date on the scope of their program or policy, the number of~~  
5 ~~enforcement actions against small entities that qualified or failed to qualify for~~  
6 ~~the program or policy, and total amount of penalty reduction or waiver.~~

## 7 TITLE III-EQUAL ACCESS TO JUSTICE ACT

### 8 AMENDMENTS

#### 9 SEC. 301. ADMINISTRATIVE PROCEEDINGS.

10 Section 504(b)(1) of title 5, United States Code, is amended --

11 (1) ~~in subsection (b),~~ by striking "\$75" in subparagraph (A)(I) and  
12 inserting "\$125"; and

13 (2) ~~by striking ", or (ii)" in subparagraph subsection (B) and inserting "~~  
14 ~~(ii)";~~

15 ~~— (3) at the end of subparagraph (B), by striking "," and inserting by adding~~  
16 ~~the following new paragraph: ", or (iii) a small entity as defined in section~~  
17 ~~601,";~~

18 ~~— (4) by striking ", and" in subparagraph (D) and inserting ","~~

20 ~~— (5) by adding at the end the following new subparagraphs:~~

21 ~~— "(F) "prevailing party" includes a small entity with respect to claims in~~  
22 ~~an adversary adjudication brought by an agency (1) that the small entity has~~  
23 ~~raised a successful defense to, or (2) with respect to which, an adjudicative~~  
24 ~~officer of the agency shall award attorneys fees and other expenses to a party~~  
25 ~~or a small entity, as defined in Section 601, if the decision of the~~  
26 ~~adjudicative officer is substantially disproportionately less favorable than that~~  
27 ~~sought by the agency in the adversary adjudication, provided that such small~~

1 ~~entity has not an express demand by the agency, unless the party or small~~  
2 ~~entity has~~ committed a willful violation of law or otherwise acted in bad  
3 faith.”.

#### 4 SEC. 302. JUDICIAL PROCEEDINGS.

5 Section 2412 of title 28, United States Code, is amended--~~in paragraph (d)~~

6 ~~(1) in paragraph (2d)--~~

7 ~~— (1) by striking “\$75” in subparagraph (2)(A) and inserting “\$125”;~~

8 ~~— (2) by striking “, or and~~

9 ~~(2) in paragraph (d)(ii)” in by adding the following new subparagraph~~

10 ~~(B) and inserting “, (ii~~

11 ~~“(D)”;~~

12 ~~— (3) by striking “, and” in subparagraph (G) and inserting “;”~~

13 ~~— (4) in subparagraph (H)--~~

14 ~~— (i) after “prevailing party,” by inserting “includes a small entity~~

15 ~~with respect to a claims in (i) a civil action brought by the United States~~

16 ~~(1) that the small entity has raised, a court shall award attorneys fees and~~

17 ~~other expenses to a successful defense to party or a small entity, or (2)~~

18 ~~with respect to which the final judgement as defined in the action is~~

19 ~~substantially less than that sought by the United States, provided that~~

20 ~~such small entity has not committed a willful violation of the law or~~

21 ~~otherwise acted in bad faith, and”;~~ and

22 ~~— (ii) at the end of the subparagraph, by striking the period and inserting~~

23 ~~“, and”;~~ and

24 ~~— (Section 601 of title ) by adding at 5 United States Code, if the judgment~~

25 ~~finally obtained by the United States is disproportionately less favorable than~~

26 ~~an express demand by the United States, unless the party or small entity has~~

27 ~~committed a willful violation of law or otherwise acted in bad faith. For~~

28 ~~purposes of this subparagraph, an “express demand” shall not include a~~

1 ~~recitation at the end the following new subparagraph:~~

2 ~~“(1) in a civil action complaint of the maximum statutory penalty.”~~

3 **TITLE IV--REGULATORY FLEXIBILITY ACT**

4 **AMENDMENTS**

5 ~~brought by the United States against a small entity, a position of the United~~  
6 ~~States, including any citation, assessment, fine, penalty or demand for~~  
7 ~~settlement sought by an agency, is “substantially justified” only if the~~  
8 ~~United States demonstrates that such position does not substantially exceed~~  
9 ~~the value of the final judgement in the action, and the position of the~~  
10 ~~United States is consistent with agency policy.”~~

11 ~~TITLE IV--REGULATORY FLEXIBILITY ACT AMENDMENTS~~

12 ~~SEC. 401. REGULATORY FLEXIBILITY ANALYSES.~~

13 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,  
14 United States Code, is amended--

15 (1) by inserting after “proposed rule”, the phrase “, or publishes a notice  
16 of interpretive~~proposed~~ rule making of general applicability for any  
17 proposed interpretive rule”~~rule making of general applicability~~; and

18 (2) by inserting at the end of the subsection, the following new sentence:

19 “In the case of interpretive rule making involving the internal revenue laws  
20 of the United States, this section applies only to regulations as that term is used  
21 in section 7805 of the Internal Revenue Code of 1986 that impose a record  
22 keeping, reporting or paperwork requirement and only to the extent such  
23 regulation imposes a collection of information, as that term is defined in the  
24 Paperwork Reduction Act of 1995) on small entities.”

25 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5,  
26 United States Code, is amended --

27 (1) in subsection (a) to read as follows:

1       “(a) When an agency promulgates a final rule under section 553 of this title,  
2 after being required by that section or any other law to publish a general notice  
3 of proposed rulemaking, or otherwise publishing an initial regulatory flexibility  
4 analysis, the agency shall prepare a final regulatory flexibility analysis. Each  
5 final regulatory flexibility analysis shall contain--

6       “(1) a succinct statement of the need for, and objectives of, the rule;

7       “(2) a summary of the ~~significant~~ issues raised by the public comments in  
8 response to the initial regulatory flexibility analysis, a summary of the  
9 assessment of the agency of such issues, and a statement of any changes made  
10 in the proposed rule as a result of such comments;

11       “(3) a description of, and an estimate of the number of, small entities to  
12 which the rule will apply or an explanation of why no such estimate is  
13 available;

14       “(4) a description of the projected reporting, record keeping and other  
15 compliance requirements of the rule, including an estimate of the classes of  
16 small entities which will be subject to the requirement and the type of  
17 professional skills necessary for preparation of the report or record; and

18       “(5) a description of the steps the agency has taken to minimize the  
19 significant economic impact on small entities consistent with the stated  
20 objectives of applicable statutes, including a statement of the factual, policy, and  
21 legal reasons for selecting the alternative adopted in the final rule and why each  
22 one of the other significant alternatives to the rule considered by the agency  
23 ~~which effect the impact on small business~~ was rejected.”; and

24       (2) in subsection (b), by striking “at the time” and all that follows and  
25 inserting “such analysis or a summary thereof”;

26       ~~SEC.~~

27       ~~SEC.~~ 402. JUDICIAL REVIEW.

28       Section 611 of title 5, United States Code, is amended to read as follows:

1    **“§611. Judicial Review**

2       “(a)(1) For any rule subject to this chapter, a small entity that is adversely  
3 affected or aggrieved by agency action is entitled to judicial review of agency  
4 compliance with the requirements of this chapter, except the requirements of  
5 sections 602, 603, 609 and 612.

6       “(2) Each court having jurisdiction to review such rule for compliance with  
7 section 553 of this title or under any other provision of law shall have  
8 jurisdiction to review any claims of noncompliance with this chapter, except the  
9 requirements of sections 602, 603, 609 and 612.

10       “(3)(A) A small entity may seek such review during the period beginning on  
11 the date of final agency action and ending one year later, except that where a  
12 provision of law requires that an action challenging a final agency action be  
13 commenced before the expiration of such one year period, such lesser period  
14 shall apply to a petition for judicial review under this section.

15       “(B) In the case where an agency delays the issuance of a final regulatory  
16 flexibility analysis pursuant to section 608(b) of this chapter, a petition for  
17 judicial review under this section shall be filed not later than --

18           (i) one year after the date the analysis is made available to the public,  
19           or

20           (ii) where a provision of law requires that an action challenging a  
21 final agency regulation be commenced before the expiration of the one  
22 year period, the number of days specified in such provision of law that is  
23 after the date the analysis is made available to the public.

24       “(4) If the court determines, on the basis of the rulemaking record, that the  
25 agency action under this chapter was arbitrary, capricious, an abuse of discretion  
26 or otherwise not in accordance with the law, the court shall order the agency to  
27 take corrective action consistent with this chapter, which may include--

28           (A) remanding the rule to the agency, ~~or and~~

1 (B) deferring the enforcement of the rule against small entities, unless the  
2 court finds good cause for continuing the enforcement of the rule pending  
3 the completion of the corrective action.

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

8 “(b) In an action for the judicial review of a rule, the regulatory flexibility  
9 analysis for such rule, including an analysis prepared or corrected pursuant to  
10 paragraph (a)(4), shall constitute part of the entire record of agency action in  
11 connection with such review.

12 “(c) Except as otherwise required by this chapter, the court shall apply the  
13 same standards of judicial review that govern the review of agency findings  
14 under the statute granting the agency authority to conduct a rule making.

15 “(d) Compliance or noncompliance by an agency with the provisions of this  
16 chapter shall be subject to judicial review only in accordance with this section.

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

20 **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

21 (a) Section 605(b) of title 5, United States Code, is amended to read as  
22 follows:

23 “(b) Sections 603 and 604 of this title shall not apply to any proposed or  
24 final rule if the head of the agency certifies that the rule will not, if  
25 promulgated, have a significant economic impact on a substantial number of  
26 small entities. If the head of the agency makes a certification under the  
27 preceding sentence, the agency shall publish such certification in the Federal  
28 Register, at the time of publication of general notice of proposed rule making

1 for the rule or at the time of publication of the final rule, along with a statement  
2 providing the factual and legal reasons for such certification. The agency shall  
3 provide such certification and statement to the Chief Counsel for Advocacy of  
4 the Small Business Administration.”.

5 (b) Section 612 of title 5, United States Code is amended --

6 (1) in subsection (a), by striking “the committees on the Judiciary of the  
7 Senate and the House of Representatives, the Select Committee on Small  
8 Business of the Senate, and the Committee on Small Business of the House  
9 of Representatives” and inserting “the Committees on the Judiciary and  
10 Small Business of the Senate and House of Representatives”.

11 (2) in subsection (b), by striking “his views with respect to the” and  
12 inserting in lieu thereof, “his or her views with respect to compliance with  
13 this chapter, the ~~adequacy validity of the rulemaking record rule with respect~~  
14 ~~to small entities~~ and the”.

15 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

16 (a) SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.--

17 Section 609 of title 5, United States Code is amended --

18 (1) before “techniques,” by inserting “the reasonable use of”;

19 (2) in paragraph (4), after “entities”, by inserting “including soliciting and  
20 receiving comments over computer networks”;

21 (3) by designating the current text as subsection (a); and

22 (4) by adding the following new subsection:

23 “(b) Prior to publication of an initial regulatory flexibility analysis

24 ~~“(1) that an agency is required by this chapter to conduct--~~

25 ~~“(1) a covered agency shall notify the Chief Counsel for Advocacy of the~~  
26 ~~Small Business Administration and provide the Chief Counsel with~~  
27 ~~information on the potential impacts of the Chief Counsel with information~~  
28 ~~on the potential impacts of the proposed rule on small entities and the type~~

1 of small entities that might be affected;

2 “(2) the Chief Counsel shall identify individuals representative of affected  
3 small entities for the purpose of obtaining advice and recommendations from  
4 these individuals about the potential impacts of obtaining advice and  
5 recommendations from those individuals about the potential impacts of the  
6 proposed rule;

7 “(3) the agency shall convene a review panel for such rule consisting  
8 wholly of full time federal employees of the office within the agency  
9 responsible for carrying out the proposed rule, the Office of Information and  
10 Regulatory Affairs within the Office of Management and Budget, and the  
11 Chief Counsel;

12 “(4) the panel shall review any material the agency has prepared in  
13 connection with this chapter, including any draft proposed rule, collect  
14 advice and recommendations of the small entity representatives identified by  
15 the agency after consultation with the Chief Counsel, on issues related to  
16 subsections 603(b), paragraphs (3), (4) and (5);

17 ~~and 603(c);~~

18 “(5) the review panel shall report on the comments of the small entity  
19 representatives and its findings as to issues related to subsections  
20 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report  
21 shall be made public as part of the rulemaking record; and

22 “(6) where appropriate, the agency shall modify the proposed rule, the  
23 initial regulatory flexibility analysis or the decision on whether an initial  
24 regulatory flexibility analysis is required.

25 “(c) Prior to publication of a final regulatory flexibility analysis that a  
26 covered agency is required by this chapter to conduct;

27 “(1) an agency shall reconvene the review panel established under  
28 paragraph (b)(3), or if no initial regulatory flexibility analysis was published.

1 undertake the actions described in paragraphs (b)(1) through (3);

2 “(2) the panel shall review any material the agency has prepared in  
3 connection with this chapter, ~~including any draft rule~~ collect the advice and  
4 recommendations of the small entity representatives identified by the agency  
5 after consultation with the Chief Counsel, on issues related to subsection  
6 604(a), paragraphs (3), (4) and (5);

7 “(3) the review panel shall report on the comments of the small entity  
8 representatives and its findings as to issues related to ~~subsection~~~~subsections~~  
9 604(a), paragraphs (3), (4) and (5), provided that such report shall be made  
10 public as part of the rulemaking record; and

11 “(4) where appropriate, the agency shall modify the final rule; ~~the final~~  
12 ~~regulatory flexibility analysis~~ or the decision on whether a final regulatory  
13 flexibility analysis is required.

14 “(d) An agency may in its discretion apply subsections (b) and (c) to rules  
15 that the agency intends to certify under subsection 605(b), but the agency  
16 believes may have a greater than de minimis impact on a substantial number of  
17 small entities.

18 ~~“(e) for purposes of this section, the term covered agency means the~~  
19 ~~Environmental Protection Agency and the Occupational Health and Safety~~  
20 ~~Administration of the Department of Labor.”.~~

21 (b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.--Not later than 30 days  
22 after the date of enactment of this Act, the head of each agency that has  
23 conducted a final regulatory flexibility analysis shall designate a small business  
24 advocacy chairperson using existing personnel to the extent possible, to be  
25 responsible for implementing this section and to act as permanent chair of the  
26 agency's review panels established pursuant to this section.

27

UNITED STATES SENATE

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT AND THE DISTRICT OF COLUMBIA

(A Subcommittee of the Committee on Governmental Affairs)

WILLIAM S. COHEN, MAINE  
CHAIRMAN

CARL LEVIN, MICHIGAN  
RANKING MEMBER

Please deliver to: Sally Katzen  
Date: 3/11 Time: 3:00 Fax: 395-3047  
From: Wanda Gustitus

Total number of pages including this page: 6

If you don't receive all pages, please call (202) 224-3682 (Senator Cohen) or (202) 224-5538 (Senator Levin)

Additional Comments:

Here's the latest proposal. Does it basically do the job? Talk to you at 4:30



Section 623. Decisional Criteria.

(a)(1)(A) In promulgating a final major rule subject to this subchapter, an agency shall, unless otherwise required by law,

select the reasonable alternative that it determines is likely to--

(i) employ to the extent practicable flexible regulatory options;

(ii) either maximize net benefits or achieve benefits in a more cost-effective manner than the other reasonable alternatives evaluated by the agency that achieve the same or a substantially similar level of benefits, unless the consideration of other significant factors, authorized by the statute granting the rulemaking authority and specifically identified by the agency in the rulemaking record, makes another reasonable alternative appropriate and in the public interest; and

(iii) provide benefits which justify the costs of the rule unless scientific, technical, or economic uncertainties identified by the agency in the rulemaking record make such a determination impracticable [and the President determines it is appropriate and in the public interest to issue the rule.]

*envis (either (ck))*

*key -  
exception should  
apply to (ii)?*

*both in both?*

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1 ~~“(ii) either maximize net benefits or achieve~~  
 2 ~~benefits in a more cost-effective manner than the~~  
 3 ~~other reasonable alternatives evaluated by the agen-~~  
 4 ~~cy that achieve the same or a substantially similar~~  
 5 ~~level of benefits; and~~

*Insert D*

6 ~~“(iii) provide benefits which justify the costs of~~  
 7 ~~the rule unless scientific, technical, or economic un-~~  
 8 ~~certainties identified by the agency in the rule-~~  
 9 ~~making record make such a determination ~~infeasible~~~~  
 10 ~~and the President determines it is appropriate and~~  
 11 ~~in the public interest to issue the rule.~~

*impracticable*

12 “(B) Nothing in subparagraph (A)(iii) provides au-  
 13 thority for the agency to act when not otherwise author-  
 14 ized by law.

15 “(C) Any determination under this paragraph shall  
 16 be based upon the rulemaking record as a whole, including  
 17 the regulatory analysis required by section 622.

18 “(2) The agency shall publish in the Federal Register  
 19 at the time of promulgation of the final rule an expla-  
 20 nation of the determinations made with respect to this  
 21 subsection, and any required Presidential determination.

*and to Congress*

22 “(3) The President may delegate the authority to  
 23 make a determination under this subsection only to the  
 24 Director of the Office of Management and Budget.

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1       “(b) If the agency is unable to make the determina-  
2       tion required under subsection (a)(1)(A)(iii) that the bene-  
3       fits of the reasonable alternative it selected justify the  
4       costs because the selection of <sup>such</sup> ~~that~~ alternative is otherwise  
5       required by law, the agency shall at the time the final rule  
6       is published in the Federal Register, place in the Federal  
7       Register and forward to Congress—

8               “(1) an explanation of the reason why such a  
9       determination cannot be made; and

10              “(2) a statement regarding the statutory provi-  
11       sions that required the agency to select an alter-  
12       native for which the benefits do not justify the costs,  
13       including any recommendation for amendments to  
14       the statutory provisions and identification of other  
15       possible regulatory options which could have benefits  
16       that justify the costs and meet the objectives of the  
17       statute.

18       “(c) The procedures for congressional review under  
19       chapter 8 for a final major rule subject to subsection (b)  
20       shall be modified as follows:

21              “(1) The time period under section  
22       801(b)(2)(A) shall be 90 days instead of the 45-day  
23       period specified under such subparagraph.

24              “(2) The time period of 20 calendar days under  
25       section 801(i)(3) shall be 30 calendar days.

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1           “(3) The requirement under section 801(i)(3)  
2           for 30 Senators on a discharge petition shall be 20  
3           Senators.

4           “(d) Nothing in this section shall be construed to  
5           override any statutory requirement, including health, safe-  
6           ty, and environmental requirements.

7           “§ 624. Judicial review

8           “(a) Compliance or noncompliance by an agency with  
9           the provisions of this subchapter and subchapter III shall  
10          be subject to judicial review only in accordance with this  
11          section.

12          “(b) Any determination by the Director that a rule  
13          is, or is not, a major rule shall not be subject to judicial  
14          review in any manner.

15          “(c) The determination by an agency that a rule is,  
16          or is not, a major rule shall be set aside by a reviewing  
17          court only upon a clear and convincing showing that the  
18          determination is erroneous in light of the information  
19          available to the agency at the time the agency made the  
20          determination.

21          “(d) No claim of noncompliance with this subchapter  
22          or subchapter III shall be reviewed separate or apart from  
23          judicial review of the final agency action to which it re-  
24          lates.

5

**JUDICIAL REVIEW**

(e) In any proceeding involving judicial review under section 706 or under the statute granting the rulemaking authority, the information contained in any cost-benefit analysis or risk assessment required under subchapter II or III may be considered by the court as part of the rulemaking record solely for the purpose of determining whether the final agency action is arbitrary, capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise provided by law). The adequacy of compliance or the failure to comply with subchapter II or III shall not be grounds for remanding or invalidating a final agency action, unless the agency entirely failed to perform a required cost-benefit analysis or risk assessment or to conduct a peer review under section 642.

1       “(D) In a civil action brought by the United States, a court shall award  
2 attorneys fees and other expenses to a party or a small entity, as defined in  
3 Section 601 of title 5 United States Code, if an express demand by the United  
4 States is substantially and unreasonably more burdensome on the party or small  
5 entity than the judgment finally obtained by the United States, unless the party  
6 or small entity has committed a willful violation of law or otherwise acted in  
7 bad faith. For purposes of this subparagraph, an “express demand” shall not  
8 include a recitation in the complaint of the maximum statutory penalty.”

9       **TITLE IV--REGULATORY FLEXIBILITY ACT**  
10       **AMENDMENTS**

11       **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

12       (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,  
13 United States Code, is amended--

14             (1) by inserting after “proposed rule”, the phrase “, or publishes a notice  
15 of proposed rule making for a proposed interpretive rule [making] of general  
16 applicability that has the force or effect of law, or substantially alters the  
17 rights or obligations of small entities”; and

18             (2) by inserting at the end of the subsection, the following new sentences:

19             “In the case of an interpretive rule making involving the internal revenue  
20 laws of the United States, this section applies only to regulations as that term is  
21 used in section 7805 of the Internal Revenue Code of 1986. In the case of an  
22 interpretive rule making involving the internal revenue laws or the customs laws  
23 of the United States, this section applies only to the extent such regulation  
24 imposes a collection of information as that term is defined in the Paperwork  
25 Reduction Act of 1995, on small entities.

26       (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5,  
27 United States Code, is amended --



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**(DISCUSSION DRAFT)**

**FEBRUARY 28, 1996**

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 994, AS REPORTED  
OFFERED BY MR. HYDE OF ILLINOIS AND MR.  
CLINGER OF PENNSYLVANIA**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

**2 This Act may be cited as the "Small Business Growth  
3 and Administrative Accountability Act of 1996".**

**4 TITLE I--STRENGTHENING  
5 REGULATORY FLEXIBILITY**

**6 SEC. 101. JUDICIAL REVIEW.**

**7 (a) AMENDMENT.—Section 611 of title 5, United  
8 States Code, is amended to read as follows:**

**9 "§611. Judicial review**

**10 "(a)(1) Not later than one year, notwithstanding any  
11 other provision of law, after the effective date of a final  
12 rule with respect to which an agency—**

**13 "(A) certified, pursuant to section 605(b), that  
14 such rule would not have a significant economic im-  
15 pact on a substantial number of small entities; or**

1           “(B) prepared a final regulatory flexibility anal-  
2           ysis pursuant to section 604,  
3           an affected small entity may petition for the judicial re-  
4           view of such certification or analysis in accordance with  
5           the terms of this subsection. A court having jurisdiction  
6           to review such rule for compliance with the provisions of  
7           section 553 or under any other provision of law shall have  
8           jurisdiction to review such certification or analysis. In the  
9           case where an agency delays the issuance of a final regu-  
10          latory flexibility analysis pursuant to section 608(b), a pe-  
11          tition for judicial review under this subsection shall be  
12          filed not later than one year, notwithstanding any other  
13          provision of law, after the date the analysis is made avail-  
14          able to the public.

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

18          “(3) Nothing in this subsection shall be construed to  
19          affect the authority of any court to stay the effective date  
20          of any rule or provision thereof under any other provision  
21          of law.

22          “(4)(A) In the case where the agency certified that  
23          such rule would not have a significant economic impact  
24          on a substantial number of small entities, the court may  
25          order the agency to prepare a final regulatory flexibility

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1 of agency organization, personnel, procedure, practice or  
2 any routine matter.

3 **"§ 805. Judicial review**

4 "No determination, finding, action, or omission under  
5 this chapter shall be subject to judicial review.

6 **"§ 806. Applicability; severability**

7 "(a) This chapter shall apply notwithstanding any  
8 other provision of law.

9 "(b) If any provision of this chapter or the applica-  
10 tion of any provision of this chapter to any person or cir-  
11 cumstance, is held invalid, the application of such provi-  
12 sion to other persons or circumstances, and the remainder  
13 of this chapter, shall not be affected thereby.

14 **"§ 807. Exemption for monetary policy**

15 "Nothing in this chapter shall apply to rules that con-  
16 cern monetary policy proposed or implemented by the  
17 Board of Governors of the Federal Reserve System or the  
18 Federal Open Market Committee."

19 **SEC. 302. EFFECTIVE DATE.**

20 The amendment made by section 801 shall take effect  
21 on the date of enactment of this Act.

22 **SEC. 303. TECHNICAL AMENDMENT.**

23 The table of chapters for part I of title 5, United  
24 States Code, is amended by inserting immediately after  
25 the item relating to chapter 7 the following:

"8. Congressional Review of Agency Rulemaking ..... 801".

1 analysis pursuant to section 604 if the court determines,  
 2 on the basis of the rulemaking record, that the certifi-  
 3 cation was arbitrary, capricious, an abuse of discretion,  
 4 or otherwise not in accordance with law.

5       “(B) In the case where the agency prepared a final  
 6 regulatory flexibility analysis, the court may order the  
 7 agency to take corrective action consistent with the re-  
 8 quirements of section 604 if the court determines, on the  
 9 basis of the rulemaking record, that the final regulatory  
 10 flexibility analysis was prepared by the agency without ob-  
 11 servance of procedure required by section 604.

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

16               “(A) to prepare the analysis required by section  
 17 604; or

18               “(B) to take corrective action consistent with  
 19 the requirements of section 604,  
 20 the court may stay the rule or grant such other relief as  
 21 it deems appropriate.

22       “(6) In making any determination or granting any  
 23 relief authorized by this subsection, the court shall take  
 24 due account of the rule of prejudicial error.

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1       “(b) In an action for the judicial review of a rule,  
2 ~~any regulatory flexibility analysis for such rule (including~~  
3 ~~an analysis prepared or corrected pursuant to subsection~~  
4 ~~(a)(4)) shall constitute part of the whole record of agency~~  
5 ~~action in connection with such review.~~

6       “(c) Nothing in this section bars judicial review of  
7 any other impact statement or similar analysis required  
8 by any other law if judicial review of such statement or  
9 analysis is otherwise provided by law.”.

10       (b) EFFECTIVE DATE.—The amendment made by  
11 subsection (a) shall apply only to final agency rules issued  
12 after the date of enactment of this Act.

13 SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL  
14 FOR ADVOCACY.

15       (a) IN GENERAL.—Section 612 of title 5, United  
16 States Code, is amended by adding at the end the follow-  
17 ing new subsection:

18       “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-  
19 VOCACY.—

20               “(1) TRANSMITTAL OF PROPOSED RULES AND  
21 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO  
22 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before  
23 the 30th day preceding the date of publication by an  
24 agency of general notice of proposed rulemaking for  
25 a rule, the agency shall transmit to the Chief Coun-

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1 sel for Advocacy of the Small Business Administra-  
2 tion—

3 "(A) a copy of the proposed rule; and

4 "(B)(i) a copy of the initial regulatory  
5 flexibility analysis for the rule if required under  
6 section 603; or

7 "(ii) a determination by the agency that an  
8 initial regulatory flexibility analysis is not re-  
9 quired for the proposed rule under section 603  
10 and an explanation for the determination.

11 "(2) STATEMENT OF EFFECT.—On or before  
12 the 15th day following receipt of a proposed rule and  
13 initial regulatory flexibility analysis from an agency  
14 under paragraph (1), the Chief Counsel for Advo-  
15 cacy may transmit to the agency a written statement  
16 of the effect of the proposed rule on small entities.

17 "(3) RESPONSE.—If the Chief Counsel for Ad-  
18 vocacy transmits to an agency a statement of effect  
19 on a proposed rule in accordance with paragraph  
20 (2), the agency shall publish the statement, together  
21 with the response of the agency to the statement, in  
22 the Federal Register at the time of publication of  
23 general notice of proposed rulemaking for the rule.

24 "(4) SPECIAL RULE.—Any proposed rules is-  
25 sued by an appropriate Federal banking agency (as

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1 that term is defined in section 3(q) of the Federal  
2 Deposit Insurance Act (12 U.S.C. 1813(q)), the Na-  
3 tional Credit Union Administration, or the Office of  
4 Federal Housing Enterprise Oversight, in connection  
5 with the implementation of monetary policy or to en-  
6 sure the safety and soundness of federally insured  
7 depository institutions, any affiliate of such an insti-  
8 tution, credit unions, or government sponsored hous-  
9 ing enterprises or to protect the Federal deposit in-  
10 surance funds shall not be subject to the require-  
11 ments of this subsection.”

12 (b) CONFORMING AMENDMENT.—Section 603(a) of  
13 title 5, United States Code, is amended by inserting “in  
14 accordance with section 612(d)” before the period at the  
15 end of the last sentence.

16 SEC. 103. SENSE OF CONGRESS REGARDING SBA CHIEF  
17 COUNSEL FOR ADVOCACY.

18 It is the sense of Congress that the Chief Counsel  
19 for Advocacy of the Small Business Administration should  
20 be permitted to appear as amicus curiae in any action or  
21 case brought in a court of the United States for the pur-  
22 pose of reviewing a rule.

1 **TITLE II—ADMINISTRATIVE**  
2 **REVIEW**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the "Administrative Review  
5 Act of 1996".

6 **SEC. 202. PURPOSE.**

7 The purposes of this title are—

8 (1) to require agencies to regularly review their  
9 major rules to determine whether they should be  
10 continued without change, modified, consolidated  
11 with another rule, or terminated;

12 (2) to require agencies to consider the com-  
13 ments of the public, the regulated community, and  
14 the Congress regarding the actual costs and burdens  
15 of rules being reviewed under this title and whether  
16 the rules are obsolete, unnecessary, duplicative, con-  
17 flicting, or otherwise inconsistent;

18 (3) to require that any rules continued in effect  
19 under this title meet all the legal requirements that  
20 would apply to the issuance of a new rule;

21 (4) to provide for the repeal, continuation, or  
22 other change in such major rules in accordance with  
23 chapters 5 and 7 of title 5, United States Code;

24 (5) to provide for a process that allows the pub-  
25 lic and appropriate committees of the Congress to

1 request that rules that are not major rules be re-  
2 viewed in the same manner as major rules; and

3 (6) to require the Administrator to coordinate  
4 and be responsible for administrative reviews con-  
5 ducted by the agencies.

6 SEC. 203. REVIEW OF REGULATIONS.

7 A covered rule shall be subject to administrative re-  
8 view in accordance with section 205. Upon completion of  
9 such review, the agency which has jurisdiction over such  
10 rule shall conduct a rulemaking in accordance with section  
11 208 to continue such rule without change, modify it, or  
12 consolidate it with another rule or terminate such rule.

13 SEC. 204. RULES COVERED.

14 (a) COVERED RULES.—For purposes of this title, a  
15 covered rule is a rule that—

16 (1) is determined by the Administrator to be a  
17 major rule under subsection (b);

18 (2) is designated for administrative review by  
19 the Administrator in response to a petition or re-  
20 quest under subsection (c) or (d), or

21 (3) is a rule related to a rule described in para-  
22 graph (1) or (2) that is designated for administra-  
23 tive review by the Administrator under section  
24 205(a)(3) to allow for a comprehensive administra-  
25 tive review.

1 (b) MAJOR RULE.—For purposes of this title, the  
2 term “major rule” means any rule that the Administrator  
3 determines has resulted in or is likely to result in—

4 (1) an annual effect on the economy of  
5 \$100,000,000 or more;

6 (2) a major increase in costs or prices for con-  
7 sumers, individual industries, Federal, State, or local  
8 government agencies, or geographic regions; or

9 (3) significant adverse effects on competition,  
10 employment, investment, productivity, innovation, or  
11 on the ability of United States-based enterprises to  
12 compete with foreign-based enterprises in domestic  
13 and export markets.

14 (c) PUBLIC PETITIONS.—

15 (1) IN GENERAL.—Any <sup>^</sup>interested person may  
16 submit a petition to the Administrator requesting  
17 that the Administrator designate any rule that is not  
18 a major rule for administrative review. The Adminis-  
19 trator shall designate the rule for administrative re-  
20 view unless the Administrator determines that it  
21 would not be in the public interest to conduct an ad-  
22 ministrative review of the rule. In making such de-  
23 termination, the Administrator shall take into ac-  
24 count the number and nature of other petitions re-

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1 ceived on the same rule, whether or not they have  
2 already been denied.

3 (2) FORM AND CONTENT OF PETITION.—A pe-  
4 tition under paragraph (1)—

5 (A) shall be in writing, but is not otherwise  
6 required to be in any particular form;

7 (B) shall identify the rule for which admin-  
8 istrative review is requested with reasonable  
9 specificity and state on its face that the peti-  
10 tioner seeks administrative review of the rule;

11 (C) shall explain why the petitioner is an  
12 interested person; and

13 (D) shall be accompanied by a \$20 proc-  
14 essing fee.

15 (3) RESPONSE REQUIRED FOR NONCOMPLYING  
16 PETITIONS.—If the Administrator determines that a  
17 petition does not meet the requirements of this sub-  
18 section, the Administrator shall provide a response  
19 to the petitioner within 30 days after receiving the  
20 petition, notifying the petitioner of the problem and  
21 providing information on how to formulate a petition  
22 that meets those requirements.

23 (4) DECISION.—Within the 90-day period be-  
24 ginning on the date of receiving a petition that  
25 meets the requirements of this subsection, the Ad-

1 administrator shall transmit a response to the peti-  
2 tioner stating whether the petition was granted or  
3 denied, except that the Administrator may extend  
4 such period by a total of not more than 30 days.

5 (5) PETITIONS DEEMED GRANTED FOR SUB-  
6 STANTIAL INEXCUSABLE DELAY.—A petition for ad-  
7 ministrative review of a rule is deemed to have been  
8 granted by the Administrator, and the Administrator  
9 is deemed to have designated the rule for adminis-  
10 trative review, if a court finds there is a substantial  
11 and inexcusable delay, beyond the period specified in  
12 paragraph (4), in notifying the petitioner of the Ad-  
13 ministrator's determination to grant or deny the pe-  
14 tition.

15 (6) PUBLIC LOG.—The Administrator shall  
16 maintain a public log of petitions submitted under  
17 this subsection, that includes the status or disposi-  
18 tion of each petition.

19 (d) CONGRESSIONAL REQUESTS.—

20 (1) IN GENERAL.—An appropriate committee of  
21 the Congress, by a majority vote of the members of  
22 the committee voting, may request in writing that  
23 the Administrator designate any rule that is not a  
24 major rule for administrative review. The Adminis-  
25 trator shall designate such rule for administrative

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1 review within 30 days after receipt of such a request  
 2 unless the Administrator determines that it would  
 3 not be in the public interest to conduct an adminis-  
 4 trative review of such rule.

5 (2) NOTICE OF DENIAL.—If the Administrator  
 6 denies a congressional request under this subsection,  
 7 the Administrator shall transmit to the congressional  
 8 committee making the request a notice stating the  
 9 reasons for the denial.

10 (e) PUBLICATION OF NOTICE OF ADMINISTRATIVE  
 11 REVIEW.—After the Administrator determines that a rule  
 12 is a major rule or designates a rule for administrative re-  
 13 view under subsection (a), the Administrator shall prompt-  
 14 ly publish a notice of that determination or designation  
 15 in the Federal Register.

16 SEC. 205. ADMINISTRATIVE REVIEW PROCEDURES.

17 (a) FUNCTIONS OF THE ADMINISTRATOR.—

18 (1) NOTICE OF RULES SUBJECT TO REVIEW.—

19 (A) INVENTORY AND FIRST LIST.—Within  
 20 6 months after the date of the enactment of  
 21 this title, the Administrator shall complete an  
 22 inventory of rules in effect on such date of en-  
 23 actment and determine which of such rules are  
 24 major rules pursuant to section 204(b). The  
 25 agencies with jurisdiction over rules shall assist

1 the Administrator in conducting such an inven-  
2 tory. Upon completion of the inventory, the Ad-  
3 ministrator shall publish in the Federal Reg-  
4 ister a first list of covered rules. The list  
5 shall—

6 (i) specify the particular group to  
7 which each major rule in the list is as-  
8 signed under paragraph (2), and, in ac-  
9 cordance with paragraph (2), state the  
10 final rulemaking deadline for all major  
11 rules in each such group; and

12 (ii) include other covered rules and  
13 state the final rulemaking deadline for  
14 each such rule.

15 (B) SUBSEQUENT LISTS.—After publica-  
16 tion of the first list under subparagraph (A),  
17 the Administrator shall publish in the Federal  
18 Register an updated list of covered rules at  
19 least annually, specifying the final rulemaking  
20 deadline for each rule on the list.

21 (2) GROUPING OF MAJOR RULES IN FIRST  
22 LIST.—

23 (A) STAGGERED REVIEW.—The Adminis-  
24 trator shall assign each major rule in effect on  
25 the date of enactment of this title to one of the

1 5 groups described in section 206(a)(1) to per-  
2 mit orderly and prioritized administrative re-  
3 views, and specify for each group the applicable  
4 final rulemaking deadline in accordance with  
5 such section.

6 (B) PRIORITIZATIONS.—In determining  
7 which rules shall be given priority in time in  
8 that assignment, the Administrator shall con-  
9 sult with appropriate agencies, and shall  
10 prioritize rules based on—

11 (i) the grouping of related rules in ac-  
12 cordance with paragraph (3);

13 (ii) the extent of the cost of each rule  
14 on the regulated community and the pub-  
15 lic, with priority in time given to those  
16 rules that impose the greatest cost;

17 (iii) consideration of the views of af-  
18 fected persons, including State and local  
19 governments;

20 (iv) whether a particular rule has re-  
21 cently been subject to cost/benefit analysis  
22 and risk assessment, with priority in time  
23 given to those rules that have not been  
24 subject to such analysis and assessment;

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1 (v) whether a particular rule was is-  
2 sued under a statutory provision that pro-  
3 vides broad discretion to an official in issu-  
4 ing the rule, with priority in time given to  
5 those rules that were issued under provi-  
6 sions that provide broad discretion;

7 (vi) the burden of reviewing each rule  
8 on the reviewing agency; and

9 (vii) the need for orderly processing  
10 and the timely completion of the adminis-  
11 trative reviews of existing rules.

12 (3) GROUPING OF RELATED RULES.—

13 (A) IN GENERAL.—The Administrator  
14 shall group related rules under paragraph (2)  
15 (and designate other rules) for simultaneous ad-  
16 ministrative review based upon their subject  
17 matter similarity, functional interrelationships,  
18 and other relevant factors to ensure comprehen-  
19 sive and coordinated review of redundant, over-  
20 lapping, and conflicting rules and requirements.

21 (B) INCLUSION FOR REVIEW.—The Ad-  
22 ministrator shall designate under section  
23 204(a)(3) any rule for administrative review  
24 that is necessary for a comprehensive adminis-  
25 trative review whether or not such other rule is

1 otherwise a covered rule under paragraph (1) or  
2 (2) of section 204(a).

3 (C) SIMULTANEOUS REVIEW.—The Admin-  
4 istrator shall coordinate with agencies to ensure  
5 simultaneous administrative reviews of related  
6 rules without regard to whether they were is-  
7 sued by the same agency.

8 (4) GUIDANCE.—The Administrator shall pro-  
9 vide timely guidance to agencies on the conduct of  
10 administrative reviews and the preparation of ad-  
11 ministrative review notices and reports required by  
12 this section to ensure uniform, complete, and timely  
13 administrative reviews and to ensure notice and op-  
14 portunity for public comment consistent with this  
15 section and section 208.

16 (b) AGENCY ADMINISTRATIVE REVIEW PROCE-  
17 DURE.—

18 (1) ADMINISTRATIVE REVIEW NOTICE.—At  
19 least 3½ years before the final rulemaking deadline  
20 under section 206(a) for a covered rule, the agency  
21 that has jurisdiction over the rule shall—

22 (A) publish an administrative review notice  
23 in accordance with section 207(a) in the Fed-  
24 eral Register and, to the extent reasonable and  
25 practicable, in other publications or media that

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1 are designed to reach those persons most af-  
2 fected by the covered rule; and

3 (B) request the views of the Administrator  
4 and the appropriate committees of the Congress  
5 on whether to continue without change, modify,  
6 consolidate, or terminate the covered rule.

7 (2) ADMINISTRATIVE REVIEW REPORT.—The  
8 agency shall consider the public comments and other  
9 recommendations generated by the administrative  
10 review notice and shall consult with the appropriate  
11 committees of the Congress before issuing an admin-  
12 istrative review report. At least 2 years before the  
13 final rulemaking deadline of the covered rule, the  
14 agency shall publish with respect to such rule an ad-  
15 ministrative review report in the Federal Register  
16 that includes a notice of proposed rulemaking in ac-  
17 cordance with section 207(b) and transmit such ad-  
18 ministrative review report to the Administrator and  
19 the appropriate committees of the Congress.

20 (3) OPEN PROCEDURES REGARDING ADMINIS-  
21 TRATIVE REVIEW.—In any administrative review  
22 conducted pursuant to this title, the agency conduct-  
23 ing the review shall make a written record describing  
24 contacts and the subject of all contacts the agency  
25 or Administrator made with non-governmental per-

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1 sons outside the agency relating to such review. The  
2 written record of such contact shall be made avail-  
3 able, upon request, to the public.

4 SEC. 206. FINAL RULEMAKING DEADLINES FOR COVERED  
5 RULES.

6 (a) IN GENERAL.—For purposes of this title, the  
7 final rulemaking deadline of a covered rule is as follows:

8 (1) EXISTING MAJOR RULES.—For a major rule  
9 in effect on the date of the enactment of this title,  
10 the initial final rulemaking deadline is the last day  
11 of the 5-year, 6-year, 7-year, 8-year, or 9-year pe-  
12 riod beginning on the date of the enactment of this  
13 title, as specified by the Administrator under section  
14 205(a)(2)(A). For any major rule that 6 months  
15 after such date of enactment is not assigned to such  
16 a group specified under section 205(a)(2)(A), the  
17 initial final rulemaking deadline is the last day of  
18 the 5-year period beginning on such date of enact-  
19 ment.

20 (2) NEW MAJOR RULES.—For a major rule that  
21 first takes effect after the date of the enactment of  
22 this title, the initial final rulemaking deadline is the  
23 last day of the 7-year period beginning on the date  
24 the rule first takes effect.

1           (3) RULES COVERED PURSUANT TO PUBLIC PE-  
2           TITION OR CONGRESSIONAL REQUEST.—For any rule  
3           subject to administrative review pursuant to a public  
4           petition under section 204(c) or a congressional re-  
5           quest under section 204(d), the initial final rule-  
6           making deadline is the last day of the 4-year period  
7           beginning on—

8                   (A) the date the Administrator so des-  
9                   ignates the rule for review; or

10                   (B) the date of issuance of a final court  
11                   order that the Administrator is deemed to have  
12                   designated the rule for administrative review.

13           (4) RELATED RULE DESIGNATED FOR RE-  
14           VIEW.—For a rule that the Administrator designates  
15           under section 205(a)(3) for administrative review be-  
16           cause it is related to another covered rule and that  
17           is grouped with that other rule for simultaneous re-  
18           view, the initial final rulemaking deadline is the  
19           same as the final rulemaking deadline for that other  
20           rule.

21           (5) EXTENSION.—The President may extend  
22           the final rulemaking deadline established under  
23           paragraph (1), (2), (3), or (4) for a period of up to  
24           6 months by publishing a notice of such extension in

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1 the Federal Register together with an explanation of  
2 the basis for such extension.

3 (6) NEW FINAL RULEMAKING DEADLINE  
4 AFTER FINAL AGENCY ACTION.—For a rule that  
5 has undergone administrative review and rulemaking  
6 pursuant to this title and that has not been termi-  
7 nated, the next final rulemaking deadline date is the  
8 last day of the 7-year period beginning on the effec-  
9 tive date of the rule as continued or as newly pro-  
10 mulgated under section 208.

11 (b) LIMITATION ON INTERIM REVIEWS.—An agency  
12 may not undertake a comprehensive review and significant  
13 revision of a covered rule more frequently than required  
14 by this title or another law, unless the head of the agency  
15 determines that the likely benefits from such review and  
16 revision outweigh the reasonable expenditures that have  
17 been made in reliance on the rule as in effect before such  
18 revision. For purposes of this section, a law may be consid-  
19 ered to require a comprehensive review and significant re-  
20 vision of a rule if it makes significant changes in the Act  
21 under which the rule was issued.

22 (c) DETERMINATIONS WHERE RULES HAVE BEEN  
23 AMENDED.—For purposes of this title, if various provi-  
24 sions of a covered rule were issued at different times, then

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1 the rule as a whole shall be treated as if it were issued  
2 on the later of—

3 (1) the date of issuance of the provision of the  
4 rule that was issued first; or

5 (2) the date the most recent comprehensive re-  
6 view and significant revision of the rule was com-  
7 pleted.

8 (d) COMPREHENSIVE REVIEW AND SIGNIFICANT RE-  
9 VISION.—In this section, the term “comprehensive review  
10 and significant revision” includes an administrative review  
11 and final rulemaking under this title, whether or not the  
12 rule is revised.

13 SEC. 207. ADMINISTRATIVE REVIEW NOTICES AND AGENCY  
14 REPORTS.

15 (a) ADMINISTRATIVE REVIEW NOTICES.—The ad-  
16 ministrative review notice under section 205(b)(1) for a  
17 rule shall request public comment and contain—

18 (1) a request for comments regarding whether  
19 the rule should be continued without change, modi-  
20 fied, consolidated with another rule, or terminated;

21 (2) if applicable, a request for comments re-  
22 garding whether the rule meets the applicable Fed-  
23 eral cost/benefit and risk assessment criteria; and

24 (3) a request for comments about the past im-  
25 plementation and effects of the rule, including—

1 (A) the direct and indirect costs incurred  
 2 because of the rule, including the net reduction  
 3 in the value of private property (whether real,  
 4 personal, tangible, or intangible), and whether  
 5 the incremental benefits of the rule exceeded  
 6 the incremental costs of the rule, both generally  
 7 and regarding each of the specific industries  
 8 and sectors it covers;

9 (B) whether the rule as a whole, or any  
 10 major feature of it, is outdated, obsolete, or un-  
 11 necessary, whether by change of technology, the  
 12 marketplace, or otherwise;

13 (C) the extent to which the rule or infor-  
 14 mation required to comply with the rule dupli-  
 15 cated, conflicted, or overlapped with require-  
 16 ments under rules of other agencies;

17 (D) in the case of a rule addressing a risk  
 18 to health or safety or the environment, what the  
 19 perceived risk was at the time of issuance and  
 20 to what extent the risk predictions were accu-  
 21 rate;

22 (E) whether the rule unnecessarily im-  
 23 peded domestic or international competition or  
 24 unnecessarily intruded on free market forces,  
 25 and whether the rule unnecessarily interfered

1 with opportunities or efforts to transfer to the  
 2 private sector duties carried out by the Govern-  
 3 ment;

4 (F) whether, and to what extent, the rule  
 5 imposed unfunded mandates on, or otherwise  
 6 adversely affected, State and local governments;

7 (G) whether compliance with the rule re-  
 8 quired substantial capital investment and  
 9 whether terminating the rule on the next final  
 10 rulemaking deadline would create an unfair ad-  
 11 vantage to those who are not in compliance  
 12 with it;

13 (H) whether the rule constituted the least  
 14 costly, most cost-effective, or least burdensome  
 15 alternative that achieved its objective consistent  
 16 with the criteria of the Act under which the  
 17 rule was issued, and to what extent the rule  
 18 provided flexibility to those who were subject to  
 19 it;

20 (I) whether the rule was worded simply  
 21 and clearly, including clear identification of  
 22 those who were subject to the rule;

23 (J) whether the rule created negative unin-  
 24 tended consequences;

1 (K) the extent to which information re-  
2 quirements under the rule can be reduced; and

3 (L) the extent to which the rule has con-  
4 tributed positive benefits, particularly health or  
5 safety or environmental benefits.

6 (b) ADMINISTRATIVE REVIEW REPORT.—The admin-  
7 istrative review report under section 205(b)(2) on the ad-  
8 ministrative review of a rule shall—

9 (1) contain the factual findings and legal con-  
10 clusions of the agency conducting the review regard-  
11 ing the application of section 208(b) to the rule and  
12 the agency's proposed recommendation as to wheth-  
13 er the rule should be continued without change,  
14 modified, consolidated with another rule, or termi-  
15 nated;

16 (2) in the case of a rule that the agency pro-  
17 poses to continue without change, to modify, or to  
18 consolidate with another rule, contain—

19 (A) a notice of proposed rulemaking under  
20 section 553 of title 5, United States Code or  
21 under other statutory rulemaking procedures  
22 required for that rule, and

23 (B) the text of the rule as so continued  
24 without change, modified, or consolidated; and

1           (3) in the case of a rule that the agency pro-  
2           poses to terminate, contain a notice of proposed  
3           rulemaking for termination consistent with para-  
4           graph (2)(A).

5 SEC. 208. RULEMAKING.

6           (a) IN GENERAL.—After publication of the adminis-  
7           trative review report, the agency which conducted such ad-  
8           ministrative review shall conduct the rulemaking which is  
9           called for in such report. The notice of proposed rule-  
10          making published in the administrative review report pur-  
11          suant to sections 205(b)(2) and 207(b) shall constitute  
12          publication of the notice required by section 553 of title  
13          5, United States Code or other statutory rulemaking pro-  
14          cedure required for that rule.

15          (b) COMPLIANCE WITH OTHER LAWS.—In order for  
16          any rule subject to administrative review to continue with-  
17          out change or to be modified or consolidated in accordance  
18          with this title, such rule must be authorized by law, and  
19          meet the same statutory requirements that would apply  
20          as if it were issued as a new rule pursuant to chapter 5  
21          of title 5, United States Code, or other applicable statu-  
22          tory rulemaking procedure.

23          (c) PRESIDENTIAL REVIEW.—After an agency deter-  
24          mines to take action under subsection (a), the agency, not  
25          later than 60 days before taking final agency action, shall

1 notify the President of such action. Before the expiration  
2 of such 60 days, the President may, on the basis of the  
3 record of such rulemaking, direct the agency to take a dif-  
4 ferent action.

5 (d) REISSUANCE.—If a covered rule is terminated  
6 under rulemaking begun under subsection (a), a rule may  
7 not be reissued in substantially the same form unless—

8 (1) the President approves the reissuance of  
9 such rule; and

10 (2) the rule as reissued complies with the cri-  
11 teria of subsection (b) and results from a rule-  
12 making in accordance with chapter 5 of title 5, Unit-  
13 ed States Code, or other applicable statute or statu-  
14 tory rulemaking procedure.

15 (e) PRESERVATION OF INDEPENDENCE OF FEDERAL  
16 BANK REGULATORY AGENCIES.—The head of any appro-  
17 priate Federal banking agency (as that term is defined  
18 in section 3(q) of the Federal Deposit Insurance Act (12  
19 U.S.C. 1813(q)), the Federal Housing Finance Board, the  
20 National Credit Union Administration, and the Office of  
21 Federal Housing Enterprise Oversight shall have the au-  
22 thority with respect to that agency that would otherwise  
23 be granted to the President in subsections (c) and (d).

1 SEC. 209. DESIGNATION OF AGENCY REGULATORY REVIEW  
2 OFFICERS.

3 The head of each agency shall designate an officer  
4 of the agency as the Regulatory Review Officer of the  
5 agency. The Regulatory Review Officer of an agency shall  
6 be responsible for the implementation of this title by the  
7 agency and shall report directly to the head of the agency  
8 and the Administrator with respect to that responsibility.

9 SEC. 210. RELATIONSHIP TO OTHER LAW; SEVERABILITY.

10 (a) RELATIONSHIP TO APA.—Nothing in this title is  
11 intended to supersede the provisions of chapters 5, 6, and  
12 7 of title 5, United States Code.

13 (b) SEVERABILITY.—If any provision of this title, or  
14 the application of any provision of this title to any person  
15 or circumstance, is held invalid, the application of such  
16 provision to other persons or circumstances, and the re-  
17 mainder of this title, shall not be affected thereby.

18 SEC. 211. JUDICIAL REVIEW.

19 (a) IN GENERAL.—A denial or substantial inexcus-  
20 able delay in granting or denying a petition under section  
21 204(c) shall be considered final agency action subject to  
22 review under section 702 of title 5, United States Code.  
23 A denial of a congressional request under section 204(d)  
24 shall not be subject to judicial review.

25 (b) TIME LIMITATION ON FILING A CIVIL ACTION.—  
26 Notwithstanding any other provisions of law, an action

1 seeking judicial review of a final agency action under this  
2 title may not be brought--

3 (1) in the case of a final agency action denying  
4 a public petition under section 204(c) or continuing  
5 without change, modifying, consolidating, or termi-  
6 nating a covered rule, more than 30 days after the  
7 date of that final agency action; or

8 (2) in the case of an action challenging a delay  
9 in deciding on a petition for a rule under section  
10 204(c), more than 1 year after the period applicable  
11 to the rule under section 204(c)(4).

12 (c) AVAILABILITY OF JUDICIAL REVIEW UNAF-  
13 FECTED.—Except to the extent that there is a direct con-  
14 flict with the provisions of this title, nothing in this title  
15 is intended to affect the availability or standard of judicial  
16 review for agency regulatory action.

17 (d) ACTION TO COMPEL AGENCY ACTION.—

18 (1) IN GENERAL.—If there has been no final  
19 rulemaking action on a rule subject to administra-  
20 tive review by the applicable final rulemaking dead-  
21 line specified in section 206(a), the agency's inaction  
22 shall be presumed to be agency action unlawfully  
23 withheld or unreasonably delayed.

24 (2) COURT ORDER.—If a court determines that  
25 an agency's inaction constitutes agency action un-

1 lawfully withheld or unreasonably delayed, the court  
2 shall order the agency to complete final rulemaking  
3 by a date certain. The date certain may not be more  
4 than 2 years beyond the final rulemaking deadline  
5 specified in section 206(a) for such rule.

6 (3) SUSPENSION.—If a court enters an order  
7 pursuant to paragraph (2) and the agency does not  
8 complete the final rulemaking by the deadline speci-  
9 fied in such order, the court may suspend the effec-  
10 tiveness of all or a portion of the covered rule which  
11 was the basis of such rulemaking until such date as  
12 the agency completes such final rulemaking.

13 SEC. 212. EFFECT OF TERMINATION OR SUSPENSION OF A  
14 COVERED RULE.

15 (a) EFFECT OF TERMINATION OR SUSPENSION GEN-  
16 ERALLY.—If a covered rule is terminated or suspended  
17 pursuant to this title—

18 (1) this title shall not be construed to prevent  
19 the President or an agency from exercising any au-  
20 thority that otherwise exists to implement the stat-  
21 ute under which the rule was issued;

22 (2) in an agency proceeding or court action be-  
23 tween an agency and a non-agency party, the rule  
24 shall be given no conclusive effect but may be sub-

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1 mitted as evidence of a prior agency practice or pro-  
2 cedure; and

3 (3) this title shall not be construed to prevent  
4 the continuation or institution of any enforcement  
5 action that is based on a violation of the rule that  
6 occurred before the effectiveness of the rule termi-  
7 nated or was suspended.

8 (b) EFFECT ON DEADLINES.—

9 (1) IN GENERAL.—Any deadline for, relating to,  
10 or involving any action dependent upon, any rule  
11 terminated or suspended under this title is sus-  
12 pended until the agency that issued the rule issues  
13 a new rule on the same matter, unless otherwise pro-  
14 vided by a law.

15 (2) DEADLINE DEFINED.—In this subsection,  
16 the term “deadline” means any date certain for ful-  
17 filling any obligation or exercising any authority es-  
18 tablished by or under any Federal rule, or by or  
19 under any court order implementing any Federal  
20 rule.

21 SEC. 213. DELEGATION.

22 Section 301 of title 3, United States Code, shall apply  
23 to any delegation by the President of authority under this  
24 title, except that the President may delegate the functions

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1 of the President under this title to any officer of the execu-  
2 tive branch.

3 SEC. 214. DEFINITIONS.

4 In this title:

5 (1) ADMINISTRATIVE REVIEW.—The term “ad-  
6 ministrative review” means a review of a rule under  
7 section 206.

8 (2) ADMINISTRATOR.—The term “Adminis-  
9 trator” means the Administrator of the Office of In-  
10 formation and Regulatory Affairs in the Office of  
11 Management and Budget.

12 (3) AGENCY.—The term “agency” has the  
13 meaning given that term in section 551(1) of title 5,  
14 United States Code.

15 (4) APPROPRIATE COMMITTEE OF THE CON-  
16 GRESS.—The term “appropriate committee of the  
17 Congress” means, with respect to a rule, each stand-  
18 ing committee of Congress having jurisdiction under  
19 the rules of the House of Representatives or the  
20 Senate to report a bill to amend the provision of law  
21 under which the rule is issued.

22 (5) FINAL RULEMAKING DEADLINE.—The term  
23 “final rulemaking deadline” means the date by  
24 which an agency must complete its final rulemaking  
25 action under section 208.

1 (6) RULE.—

2 (A) GENERAL RULE.—Subject to subpara-  
3 graph (B), the term "rule" means any agency  
4 statement, including agency guidance docu-  
5 ments, which are designed to implement, inter-  
6 pret, or prescribe law or policy or to describe  
7 the procedures or practices of an agency, which  
8 are intended to assist in such actions, and  
9 which are of general applicability and future ef-  
10 fect, but does not include—

11 (i) regulations or other agency state-  
12 ments issued in accordance with formal  
13 rulemaking provisions of sections 556 and  
14 557 of title 5, United States Code, or in  
15 accordance with other statutory rule-  
16 making procedures that provide the same  
17 safeguard for a decision on the record  
18 after an opportunity for a hearing with the  
19 right to present evidence and conduct cross  
20 examination;

21 (ii) regulations or other agency state-  
22 ments that are limited to agency organiza-  
23 tion, management, or personnel matters;

24 (iii) regulations or other agency state-  
25 ments issued with respect to a military or

1 foreign affairs function of the United  
2 States;

3 (iv) regulations, statements, or other  
4 agency actions that are reviewed and usu-  
5 ally modified each year (or more fre-  
6 quently), or are reviewed regularly and  
7 usually modified based on changing eco-  
8 nomic or seasonal conditions;

9 (v) regulations or other agency actions  
10 that grant an approval, license, permit,  
11 registration, or similar authority or that  
12 grant or recognize an exemption or relieve  
13 a restriction, or any agency action nec-  
14 essary to permit new or improved applica-  
15 tions of technology or to allow the manu-  
16 facture, distribution, sale, or use of a sub-  
17 stance or product; and

18 (vi) regulations or other agency state-  
19 ments that the Administrator certifies in  
20 writing are necessary for the enforcement  
21 of the Federal criminal laws.

22 (B) SCOPE OF A RULE.—For purposes of  
23 a major rule under this title, each set of rules  
24 designated in the Code of Federal Regulations  
25 as a part (other than part 1 of title 26 of the

1 Code of Federal Regulations) shall be treated  
 2 as one rule. Each set of rules that do not ap-  
 3 pear in the Code of Federal Regulations and  
 4 that are comparable to a part of that Code  
 5 under guidelines established by the Adminis-  
 6 trator shall be treated as one rule.

7 **SEC. 215. SUNSET OF THIS TITLE.**

8 This title shall have no force or effect after the 12-  
 9 year period beginning on the date of the enactment of this  
 10 title.

11 **TITLE III—CONGRESSIONAL**  
 12 **REVIEW**

13 **SEC. 301. CONGRESSIONAL REVIEW OF AGENCY RULE-**  
 14 **MAKING.**

15 Title 5, United States Code, is amended by inserting  
 16 immediately after chapter 7 the following new chapter:"

17 **CHAPTER 8—CONGRESSIONAL REVIEW OF**  
 18 **AGENCY RULEMAKING**

"Sec.

"801. Congressional review.

"802. Congressional disapproval procedure.

"803. Special rule on statutory, regulatory, and judicial deadlines.

"804. Definitions.

"805. Judicial review.

"806. Applicability; severability.

"807. Exemption for monetary policy.

19 **"§ 801. Congressional review**

20 "(a)(1)(A) Before a rule can take effect as a final  
 21 rule, the Federal agency promulgating such rule shall sub-

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1 mit to each House of the Congress and to the Comptroller

2 ~~General a report containing—~~

3 “(i) a copy of the rule;

4 “(ii) a concise general statement relating to the  
5 rule; and

6 “(iii) the proposed effective date of the rule.

7 “(B) The Federal agency promulgating the rule shall  
8 make available to each House of Congress and the Comp-  
9 troller General, upon request—

10 “(i) a complete copy of the cost-benefit analysis  
11 of the rule, if any;

12 “(ii) the agency’s actions relevant to sections  
13 603, 604, 605, 607, and 609;

14 “(iii) the agency’s actions relevant to sections  
15 202, 203, 204, and 205 of the Unfunded Mandates  
16 Reform Act of 1995; and

17 “(iv) any other relevant information or require-  
18 ments under any other Act and any relevant Execu-  
19 tive orders.

20 “(C) Upon receipt, each House shall provide copies  
21 to the Chairman and Ranking Member of each committee  
22 with jurisdiction.

23 “(2)(A) The Comptroller General shall provide a re-  
24 port on each major rule to the committees of jurisdiction  
25 in each House of the Congress by the end of 12 calendar

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1 days after the submission or publication date as provided

2 in section 802(b)(2). The report of the Comptroller Gen-  
3 eral shall include an assessment of the agency's compli-  
4 ance with procedural steps required by paragraph (1)(B).

5 "(B) Federal agencies shall cooperate with the Comp-  
6 troller General by providing information relevant to the  
7 Comptroller General's report under subparagraph (A).

8 "(3) A major rule relating to a report submitted  
9 under paragraph (1) shall take effect as a final rule, the  
10 latest of—

11 "(A) the later of the date occurring 60 days  
12 (excluding days either House of Congress is ad-  
13 journed for more than 3 days during a session of  
14 Congress) after the date on which—

15 "(i) the Congress receives the report sub-  
16 mitted under paragraph (1); or

17 "(ii) the rule is published in the Federal  
18 Register;

19 "(B) if the Congress passes a joint resolution of  
20 disapproval described under section 802 relating to  
21 the rule, and the President signs a veto of such reso-  
22 lution, the earlier date—

23 "(i) on which either House of Congress  
24 votes and fails to override the veto of the Presi-  
25 dent; or

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37

1                   “(ii) occurring 30 session days after the  
2                   ~~date on which the Congress received the veto~~  
3                   and objections of the President; or

4                   “(C) the date the rule would have otherwise  
5                   taken effect, if not for this section (unless a joint  
6                   resolution of disapproval under section 802 is en-  
7                   acted).

8                   “(4) Except for a major rule, a rule shall take effect  
9                   as otherwise provided by law after submission to Congress  
10                  under paragraph (1).

11                  “(5) Notwithstanding paragraph (3), the effective  
12                  date of a rule shall not be delayed by operation of this  
13                  chapter beyond the date on which either House of Con-  
14                  gress votes to reject a joint resolution of disapproval under  
15                  section 802.

16                  “(b)(1) A rule or proposed rule shall not take effect  
17                  (or continue) as a final rule, if the Congress enacts a joint  
18                  resolution of disapproval described under section 802.

19                  “(2) A rule or proposed rule that does not take effect  
20                  (or does not continue) under paragraph (1) may not be  
21                  reissued in substantially the same form, and a new rule  
22                  that is substantially the same as such a rule or proposed  
23                  rule may not be issued, unless the reissued or new rule  
24                  is specifically authorized by a law enacted after the date  
25                  of the joint resolution disapproving the original rule.

1       “(c)(1) Notwithstanding any other provision of this  
 2 section (except subject to paragraph (3)), a rule that  
 3 would not take effect by reason of this chapter may take  
 4 effect, if the President makes a determination under para-  
 5 graph (2) and submits written notice of such determina-  
 6 tion to the Congress.

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

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

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

14           “(C) necessary for national security; or

15           “(D) issued pursuant to a statute implementing  
 16 an international trade agreement.

17       “(3) An exercise by the President of the authority  
 18 under this subsection shall have no effect on the proce-  
 19 dures under section 802 or the effect of a joint resolution  
 20 of disapproval under this section.

21       “(d)(1) In addition to the opportunity for review oth-  
 22 erwise provided under this chapter, in the case of any rule  
 23 that is published in the Federal Register (as a rule that  
 24 shall take effect as a final rule) during the period begin-  
 25 ning on the date occurring 60 days before the date the

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39

1 Congress adjourns a session of Congress through the date  
2 on which the same or succeeding Congress first convenes  
3 its next session, section 802 shall apply to such rule in  
4 the succeeding session of Congress.

5 “(2)(A) In applying section 802 for purposes of such  
6 additional review, a rule described under paragraph (1)  
7 shall be treated as though—

8 “(i) such rule were published in the Federal  
9 Register (as a rule that shall take effect as a final  
10 rule) on the 15th session day after the succeeding  
11 Congress first convenes; and

12 “(ii) a report on such rule were submitted to  
13 Congress under subsection (a)(1) on such date.

14 “(B) Nothing in this paragraph shall be construed  
15 to affect the requirement under subsection (a)(1) that a  
16 report shall be submitted to Congress before a final rule  
17 can take effect.

18 “(3) A rule described under paragraph (1) shall take  
19 effect as a final rule as otherwise provided by law (includ-  
20 ing other subsections of this section).

21 “(e)(1) Section 802 shall apply in accordance with  
22 its terms to any major rule that was published in the Fed-  
23 eral Register (as a rule that shall take effect as a final  
24 rule) in the period beginning on November 20, 1994,  
25 through the date of enactment of this title.

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40

1       “(2) In applying section 802 for purposes of Congress-  
2 sional review, a rule described under paragraph (1) shall  
3 be treated as though—

4           “(A) such rule were published in the Federal  
5 Register (as a rule that shall take effect as a final  
6 rule) on the date of enactment of this title; and

7           “(B) a report on such rule were submitted to  
8 Congress under subsection (a)(1) on such date.

9       “(3) The effectiveness of a rule described under para-  
10 graph (1) shall be as otherwise provided by law, unless  
11 the rule is made of no force or effect under section 802.

12       “(f) Any rule that takes effect and later is made of  
13 no force or effect by enactment of a joint resolution under  
14 section 802 shall be treated as though such rule had never  
15 taken effect.

16       “(g) If the Congress does not enact a joint resolution  
17 of disapproval under section 802, no court or agency may  
18 infer any intent of the Congress from any action or inac-  
19 tion of the Congress with regard to such rule, related stat-  
20 ute, or joint resolution of disapproval.

21       “§ 802. Congressional disapproval procedure

22       “(a) JOINT RESOLUTION DEFINED.—For purposes  
23 of this section, the term ‘joint resolution’ means only—

24           “(1) a joint resolution introduced in the period  
25 beginning on the date on which the report referred

1 to in section 801(a) is received by Congress and end-  
2 ing 60 days thereafter (excluding days either House  
3 of Congress is adjourned for more than 3 days dur-  
4 ing a session of Congress), the matter after the re-  
5 solving clause of which is as follows: 'That Congress  
6 disapproves the rule submitted by the \_\_\_\_ relating  
7 to \_\_\_\_, and such rule shall have no force or effect.'  
8 (The blank spaces being appropriately filled in); or  
9 "(2) a joint resolution the matter after the re-  
10 solving clause of which is as follows: 'That the Con-  
11 gress disapproves the proposed rule published by the  
12 \_\_\_\_\_ relating to \_\_\_\_\_, and such proposed  
13 rule shall not be issued or take effect as a final  
14 rule.' (the blank spaces being appropriately filled in)  
15 "(b)(1) A joint resolution described in subsection (a)  
16 shall be referred to the committees in each House of Con-  
17 gress with jurisdiction.  
18 "(2) For purposes of this section, the term 'submis-  
19 sion or publication date' means—  
20 "(A) in the case of a joint resolution described  
21 in subsection (a)(1) the later of the date on which—  
22 "(i) the Congress receives the report sub-  
23 mitted under section 801(a)(1); or  
24 "(ii) the rule is published in the Federal  
25 Register; or

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1           “(B) in the case of a joint resolution described  
2           in subsection (a)(2), the date of introduction of the  
3           joint resolution.

4           “(c) In the Senate, if the committee to which is re-  
5           ferred a joint resolution described in subsection (a) has  
6           not reported such joint resolution (or an identical joint  
7           resolution) at the end of 20 calendar days after the sub-  
8           mission or publication date defined under subsection  
9           (b)(2), such committee may be discharged from further  
10          consideration of such joint resolution upon a petition sup-  
11          ported in writing by 30 Members of the Senate, and such  
12          joint resolution shall be placed on the appropriate cal-  
13          endar.

14          “(d)(1) In the Senate, when the committee to which  
15          a joint resolution is referred has reported, or when a com-  
16          mittee is discharged (under subsection (c)) from further  
17          consideration of, a joint resolution described in subsection  
18          (a), it is at any time thereafter in order (even though a  
19          previous motion to the same effect has been disagreed to)  
20          for a motion to proceed to the consideration of the joint  
21          resolution, and all points of order against the joint resolu-  
22          tion (and against consideration of the joint resolution) are  
23          waived. The motion is not subject to amendment, or to  
24          a motion to postpone, or to a motion to proceed to the  
25          consideration of other business. A motion to reconsider the

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43

1 vote by which the motion is agreed to or disagreed to shall  
2 not be in order. If a motion to proceed to the consideration  
3 of the joint resolution is agreed to, the joint resolution  
4 shall remain the unfinished business of the Senate until  
5 disposed of.

6 “(2) In the Senate, debate on the joint resolution,  
7 and on all debatable motions and appeals in connection  
8 therewith, shall be limited to not more than 10 hours,  
9 which shall be divided equally between those favoring and  
10 those opposing the joint resolution. A motion further to  
11 limit debate is in order and not debatable. An amendment  
12 to, or a motion to postpone, or a motion to proceed to  
13 the consideration of other business, or a motion to recom-  
14 mit the joint resolution is not in order.

15 “(3) In the Senate, immediately following the conclu-  
16 sion of the debate on a joint resolution described in sub-  
17 section (a), and a single quorum call at the conclusion of  
18 the debate if requested in accordance with the rules of the  
19 Senate, the vote on final passage of the joint resolution  
20 shall occur.

21 “(4) Appeals from the decisions of the Chair relating  
22 to the application of the rules of the Senate to the proce-  
23 dure relating to a joint resolution described in subsection  
24 (a) shall be decided without debate.

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44

1       “(e) If, before the passage by one House of a joint  
2 resolution of that House described in subsection (a), that  
3 House receives from the other House a joint resolution  
4 described in subsection (a), then the following procedures  
5 shall apply:

6               “(1) The joint resolution of the other House  
7 shall not be referred to a committee.

8               “(2) With respect to a joint resolution described  
9 in subsection (a) of the House receiving the joint  
10 resolution—

11               “(A) the procedure in that House shall be  
12 the same as if no joint resolution had been re-  
13 ceived from the other House; but

14               “(B) the vote on final passage shall be on  
15 the joint resolution of the other House.

16       “(f) This section is enacted by Congress—

17               “(1) as an exercise of the rulemaking power of  
18 the Senate and House of Representatives, respec-  
19 tively, and as such it is deemed a part of the rules  
20 of each House, respectively, but applicable only with  
21 respect to the procedure to be followed in that  
22 House in the case of a joint resolution described in  
23 subsection (a), and it supersedes other rules only to  
24 the extent that it is inconsistent with such rules; and

F:\M4\HYDE\HYDE.049

45

1           “(2) with full recognition of the constitutional  
2 right of either House to change the rules (so far as  
3 relating to the procedure of that House) at any time,  
4 in the same manner, and to the same extent as in  
5 the case of any other rule of that House.

6 **“§ 803. Special rule on statutory, regulatory, and judi-**  
7 **cial deadlines**

8           “(a) In the case of any deadline for, relating to, or  
9 involving any rule which does not take effect (or the effec-  
10 tiveness of which is terminated) because of enactment of  
11 a joint resolution under section 802, that deadline is ex-  
12 tended until the date 1 year after the date of the joint  
13 resolution. Nothing in this subsection shall be construed  
14 to affect a deadline merely by reason of the postponement  
15 of a rule's effective date under section 801(a).

16           “(b) The term ‘deadline’ means any date certain for  
17 fulfilling any obligation or exercising any authority estab-  
18 lished by or under any Federal statute or regulation, or  
19 by or under any court order implementing any Federal  
20 statute or regulation.

21 **“§ 804. Definitions**

22           “(a) For purposes of this chapter—

23           “(1) The term ‘Federal agency’ means any  
24 agency as that term is defined in section 551(1) (re-  
25 lating to administrative procedure).

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46

1           “(2) The term “major rule” means any rule  
2           subject to section 553(c) that has resulted in or is  
3           likely to result in—

4                   “(A) an annual effect on the economy of  
5                   \$100,000,000 or more;

6                   “(B) a major increase in costs or prices for  
7                   consumers, individual industries, Federal,  
8                   State, or local government agencies, or geo-  
9                   graphic regions; or

10                   “(C) significant adverse effects on competi-  
11                   tion, employment, investment, productivity, in-  
12                   novation, or on the ability of United States-  
13                   based enterprises to compete with foreign-based  
14                   enterprises in domestic and export markets.

15           “(3) The term ‘final rule’ means any final rule  
16           or interim final rule.

17           “(b) As used in subsection (a)(3), the term ‘rule’ has  
18           the meaning given such term in section 551, except that  
19           such term does not include any rule of particular applica-  
20           bility including a rule that approves or prescribes for the  
21           future rates, wages, prices, services, or allowances there-  
22           for, corporate or financial structures, reorganizations,  
23           mergers, or acquisitions thereof, or accounting practices  
24           or disclosures bearing on any of the foregoing or any rule

*[Handwritten mark]*

~~Confidential~~

104TH CONGRESS  
2D SESSION

S. \_\_\_\_\_

IN THE SENATE OF THE UNITED STATES

Mr. LEVIN introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

**A BILL**

To provide for comprehensive regulatory reform.

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 Reform Act  
5 of 1996".

6 **SEC. 2. DEFINITIONS.**

7 Section 551 of title 5, United States Code, is amend-  
8 ed—

9 (1) in the matter preceding paragraph (1), by  
10 striking "this subchapter" and inserting "this chap-  
11 ter and chapters 7 and 8";

**DETERMINED TO BE AN  
ADMINISTRATIVE MARKING**  
INITIALS: DB DATE: 4/8/10

1 (2) in paragraph (13), by striking "and";

2 (3) in paragraph (14), by striking the period at

3 the end and inserting "; and"; and

4 (4) by adding at the end the following new

5 paragraph:

6 "(15) 'Director' means the Director of the Of-

7 fice of Management and Budget."

8 **SEC. 3. ANALYSIS OF AGENCY RULES.**

9 (a) IN GENERAL.—Chapter 6 of title 5, United

10 States Code, is amended by adding at the end the follow-

11 ing:

12 "SUBCHAPTER II—ANALYSIS OF AGENCY

13 RULES

14 "§ 621. Definitions

15 "For purposes of this subchapter the definitions

16 under section 551 shall apply and—

17 "(1) the term 'benefit' means the reasonably

18 identifiable significant favorable effects, quantifiable

19 and nonquantifiable, including social, health, envi-

20 ronmental, economic, and distributional effects, that

21 are expected to result directly or indirectly from im-

22 plementation of, or compliance with, a rule;

23 "(2) the term 'cost' means the reasonably iden-

24 tifiable significant adverse effects, quantifiable and

25 nonquantifiable, including social, health, environ-

*Subchapter  
621*

1 mental, economic, and distributional effects that are  
2 expected to result directly or indirectly from imple-  
3 mentation of, or compliance with, a rule;

4 “(3) the term ‘cost-benefit analysis’ means an  
5 evaluation of the costs and benefits of a rule, quan-  
6 tified to the extent feasible and appropriate and oth-  
7 erwise qualitatively described, that is prepared in ac-  
8 cordance with the requirements of this subchapter at  
9 the level of detail appropriate and practicable for  
10 reasoned decisionmaking on the matter involved,  
11 taking into consideration necessary uncertainties,  
12 the significance and complexity of the decision and  
13 any need for expedition;

14 “(4) the term ‘flexible regulatory options’  
15 means regulatory options that permit flexibility to  
16 regulated persons in achieving the objective of the  
17 rulemaking including regulatory options that employ  
18 market-based mechanisms, performance standards,  
19 or voluntary programs;

20 “(5) the term ‘major rule’ means a rule or a  
21 group of closely related rules that the agency pro-  
22 posing the rule or the Director reasonably deter-  
23 mines is likely to have an annual effect on the econ-  
24 omy of \$100,000,000 or more in reasonably quan-  
25 tifiable costs and such \$100,000,000 amount shall

1 be adjusted periodically by the Director to account  
2 for inflation in increments of \$20,000,000, and such  
3 adjustment shall not be subject to judicial review;

4 “(6) the term ‘market-based mechanism’ means  
5 a regulatory approach that—

6 “(A) permits regulated persons to respond  
7 automatically to changes in general economic  
8 conditions directly pertinent to the regulatory  
9 program without affecting the achievement of  
10 the objective of the rulemaking;

11 “(B) affords flexibility to each regulated  
12 person in complying with regulatory objectives,  
13 including, where appropriate, the opportunity to  
14 transfer to, or receive from, other persons (in-  
15 cluding for cash or other legal consideration)  
16 increments of compliance responsibility estab-  
17 lished by the program; and

18 “(C) maintains the legal accountability of  
19 each regulated person for the achievement of  
20 the objective of the rulemaking;

21 “(7) the term ‘performance standard’ means a  
22 requirement that imposes legal accountability for the  
23 achievement of an explicit regulatory objective, with-  
24 out prescribing the particular method or procedures,  
25 for achieving such objective;

*meaning?*

1           “(8) the term ‘reasonable alternative’ means a  
2 reasonable regulatory option ~~within the reasonable~~  
3 ~~range of options~~ that would achieve the objective of  
4 the rulemaking and that the agency has authority to  
5 adopt under the statute granting rulemaking author-  
6 ity, including flexible regulatory options unless such  
7 flexible regulatory options are precluded by the stat-  
8 ute granting the rulemaking authority;

9           “(9) the term ‘risk assessment’ has the same  
10 meaning as such term is defined under section  
11 631(6); and

12           “(10) the term ‘rule’ has the same meaning as  
13 in section 551(4) of this title, and shall not in-  
14 clude—

15           “(A) a rule exempt from notice and public  
16 comment procedure under section 553 of this  
17 title;

18           “(B) a rule that involves the internal reve-  
19 nue laws of the United States, or the assess-  
20 ment and collection of taxes, duties, or other  
21 revenue or receipts;

22           “(C) a rule or agency action that author-  
23 izes the introduction into, or removal from,  
24 commerce, or recognizes the marketable status,  
25 of a product;

1           “(D) a rule of particular applicability that  
2           approves or prescribes for the future rates,  
3           wages, prices, services, corporate or financial  
4           structures, reorganizations, mergers, acquisi-  
5           tions, accounting practices, or disclosures bear-  
6           ing on any of the foregoing;

7           “(E) a rule relating to monetary policy  
8           proposed or promulgated by the Board of Gov-  
9           ernors of the Federal Reserve System or by the  
10          Federal Open Market Committee;

11          “(F) a rule relating to the safety or sound-  
12          ness of federally insured depository institutions  
13          or any affiliate of such an institution (as de-  
14          fined in section 2(k) of the Bank Holding Com-  
15          pany Act of 1956 (12 U.S.C. 1841(k)); credit  
16          unions; the Federal Home Loan Banks; govern-  
17          ment-sponsored housing enterprises; a Farm  
18          Credit System Institution; foreign banks, and  
19          their branches, agencies, commercial lending  
20          companies or representative offices that operate  
21          in the United States and any affiliate of such  
22          foreign banks (as those terms are defined in the  
23          International Banking Act of 1978 (12 U.S.C.  
24          3101)); or a rule relating to the payments sys-

1           tem or the protection of deposit insurance funds  
2           or Farm Credit Insurance Fund;

3           “(G) a rule or order relating to the finan-  
4           cial responsibility of brokers and dealers or fu-  
5           tures commission merchants, the safeguarding  
6           of investor securities and funds or commodity  
7           future or options customer securities and funds,  
8           the clearance and settlement of securities, fu-  
9           tures, or options transactions, or the suspension  
10          of trading under the Securities Exchange Act of  
11          1934 (15 U.S.C. 78a et seq.) or emergency ac-  
12          tion taken under the Commodity Exchange Act  
13          (7 U.S.C. 1 et seq.), or a rule relating to the  
14          protection of the Securities Investor Protection  
15          Corporation, that is promulgated under the Se-  
16          curities Investor Protection Act of 1970 (15  
17          U.S.C. 78aaa et seq.);

18          “(H) a rule issued by the Federal Election  
19          Commission or a rule issued by the Federal  
20          Communications Commission pursuant to sec-  
21          tions 312(a)(7) and 315 of the Communications  
22          Act of 1934 (47 U.S.C. 312(a)(7) and 315);

23          “(I) a rule required to be promulgated at  
24          least annually pursuant to statute;

1                   “(J) a rule or agency action relating to the  
2                   public debt; or

3                   “(K) a rule relating to a Federal grant,  
4                   contract, or loan.

5                   **“§ 622. Regulatory analysis**

6                   “(a) Before publishing notice of a proposed rule-  
7                   making for any rule, each agency shall determine whether  
8                   the rule is or is not a major rule. For the purpose of any  
9                   such determination, a group of closely related rules shall  
10                  be considered as one rule.

11                  “(b)(1) If an agency has determined that a rule is  
12                  not a major rule, the Director may determine under sec-  
13                  tion 621(4) that the rule is a major rule no later than  
14                  30 days after the close of the comment period for the rule.

15                  “(2) A determination under paragraph (1) shall be  
16                  published in the Federal Register, together with a succinct  
17                  statement of the basis for the determination.

18                  “(c)(1)(A) When the agency publishes a notice of pro-  
19                  posed rulemaking for a major rule, the agency shall issue  
20                  and place in the rulemaking file an initial regulatory anal-  
21                  ysis, and shall include a summary of such analysis in the  
22                  notice of proposed rulemaking.

23                  “(B)(i) When the Director has published a deter-  
24                  mination that a rule is a major rule after the publication  
25                  of the notice of proposed rulemaking for the rule, the

1 agency shall promptly issue and place in the rulemaking  
2 file an initial regulatory analysis for the rule and shall  
3 publish in the Federal Register a summary of such analy-  
4 sis.

5 “(ii) Following the issuance of an initial regulatory  
6 analysis under clause (i), the agency shall give interested  
7 persons an opportunity to comment pursuant to section  
8 553 of this title in the same manner as if the initial regu-  
9 latory analysis had been issued with the notice of proposed  
10 rulemaking.

11 “(2) Each initial regulatory analysis shall contain—

12 “(A) a cost-benefit analysis of the proposed rule  
13 that shall contain—

14 “(i) a succinct analysis of the benefits of  
15 the proposed rule, including any benefits that  
16 cannot be quantified, and an explanation of how  
17 the agency anticipates that such benefits will be  
18 achieved by the proposed rule, including a de-  
19 scription of the persons or classes of persons  
20 likely to receive such benefits;

21 “(ii) a succinct analysis of the costs of the  
22 proposed rule, including any costs that cannot  
23 be quantified, and an explanation of how the  
24 agency anticipates that such costs will result  
25 from the proposed rule, including a description

1 of the persons or classes of persons likely to  
2 bear such costs; and

3 “(iii) an evaluation of the relationship of  
4 the benefits of the proposed rule to its costs;

5 “(B) an evaluation of a reasonable number of  
6 reasonable alternatives/ including, where appro-  
7 priate, alternatives that—

8 “(i) require no government action;

9 “(ii) accommodate differences among geo-  
10 graphic regions and among persons with differ-  
11 ing levels of resources with which to comply;  
12 and

13 “(iii) employ flexible regulatory options;

14 “(C) a description of the ~~reliability of~~ scientific  
15 or economic evaluations or information upon which  
16 the agency substantially relied in the cost-benefit  
17 analysis and any risk assessment required under this  
18 chapter; and

19 “(D) if required under this chapter, a risk as-  
20 sessment in accordance with subchapter III.

21 “(d)(1) When the agency publishes a final major rule,  
22 the agency shall also issue and place in the rulemaking  
23 file a final regulatory analysis, and shall include a sum-  
24 mary of the analysis in the statement of basis and pur-  
25 pose.

*reflecting  
the range  
of regulatory  
options that  
could  
achieve the  
objective  
of the  
rulemaking*

*Strike or  
shorten?  
in it to JR?*

1       “(2) Each final regulatory analysis shall address each  
2 of the requirements for the initial regulatory analysis  
3 under subsection (c)(2), revised to reflect—

4               “(A) any material changes made to the pro-  
5 posed rule by the agency after publication of the no-  
6 tice of proposed rulemaking; and

7               “(B) agency consideration of significant com-  
8 ments received regarding the proposed rule and the  
9 initial regulatory analysis, including regulatory re-  
10 view communications under subchapter V.

11       “(e) The analysis of the benefits and costs of a pro-  
12 posed and a final rule required under this section shall  
13 include, to the extent feasible, a quantification or numeri-  
14 cal estimate of the quantifiable benefits and costs. Such  
15 quantification or numerical estimate shall be made in the  
16 most appropriate units of measurement, using comparable  
17 assumptions, specify the ranges of predictions, and explain  
18 the margins of error involved in the quantification meth-  
19 ods and in the estimates used. An agency shall describe  
20 the nature and extent of the nonquantifiable benefits and  
21 costs of a final rule pursuant to this section in as precise  
22 and succinct a manner as possible. An agency shall not  
23 be required to make such evaluation primarily on a mathe-  
24 matical or numerical basis.

1       “(f)(1) A major rule may be adopted without prior  
2 compliance with this subchapter or subchapter III if—

3               “(A) the agency for good cause finds that con-  
4 ducting the cost-benefit analysis under this section  
5 or risk assessment under subchapter III is contrary  
6 to the public interest due to an emergency, or health  
7 or safety threat that is likely to result in [significant] ?  
8 harm to the public or to natural resources; and

9               “(B) the agency publishes in the Federal Reg-  
10 ister, together with such finding, a succinct state-  
11 ment of the basis for the finding.

12               “(2) If a major rule is adopted under paragraph (1),  
13 the agency shall promptly comply with the provisions of  
14 subsections (a) through (e) of this section.

15               “(g) The requirements of this subchapter shall not  
16 alter the criteria for rulemaking otherwise applicable  
17 under other statutes.

18 **“§ 623. Decisional criteria**

19               “(a)(1)(A) In promulgating a final major rule subject  
20 to this subchapter, an agency shall, unless otherwise re-  
21 quired by law or subject to the provisions of subsection  
22 (b), select the reasonable alternative that it determines is  
23 likely to—

24               “(i) employ to the extent practicable flexible  
25 regulatory options;

*Handwritten:* [Ability] - concern  
Ch w/ West.  
DSS

*Handwritten:* ↑

*Handwritten:* [DOT]  
Enviro -  
except where  
ag explains  
its reasons -  
Levin: makes all  
meaningless  
Env - ag has to  
state what most  
DE/nether is -  
if it doesn't choose,  
then must explain.

1           “(ii) either maximize net benefits or achieve  
 2 benefits in a more cost-effective manner than the  
 3 other reasonable alternatives evaluated by the agen-  
 4 cy that achieve the same or a substantially similar  
 5 level of benefits; and

*Was  
 change this?  
 knocked down*

6           “(iii) provide benefits which justify the costs of  
 7 the rule unless scientific, technical, or economic un-  
 8 certainties identified by the agency in the rule-  
 9 making record make such a determination infeasible  
 10 and the President determines it is appropriate and  
 11 in the public interest to issue the rule.

*apply to  
 2nd reg  
 as well as  
 3rd.*

*excessive?  
 strike  
 (dum H1024)  
 Pass delegates to  
 anyone?  
 (except of head?)*

12           “(B) Nothing in subparagraph (A)(iii) provides au-  
 13 thority for the agency to act when not otherwise author-  
 14 ized by law.

15           “(C) Any determination under this paragraph shall  
 16 be based upon the rulemaking record as a whole, including  
 17 the regulatory analysis required by section 622.

*clear and  
 strong*

18           “(2) The agency shall publish in the Federal Register  
 19 at the time of promulgation of the final rule an expla-  
 20 nation of the determinations made with respect to this  
 21 subsection, and any required Presidential determination.

22           “(3) The President may delegate the authority to  
 23 make a determination under this subsection only to the  
 24 Director of the Office of Management and Budget.

1       “(b) If the agency is unable to make the determina-  
2 tion required under subsection (a)(1)(A)(iii) that the bene-  
3 fits of the reasonable alternative it selected justify the  
4 costs because the selection of that alternative is otherwise  
5 required by law, the agency shall at the time the final rule  
6 is published in the Federal Register, place in the Federal  
7 Register and forward to Congress—

8               “(1) an explanation of the reason why such a  
9 determination cannot be made; and

10              “(2) a statement regarding the statutory provi-  
11 sions that required the agency to select an alter-  
12 native for which the benefits do not justify the costs,  
13 including any recommendation for amendments to  
14 the statutory provisions and identification of other  
15 possible regulatory options which could have benefits  
16 that justify the costs and meet the objectives of the  
17 statute.

18       “(c) The procedures for congressional review under  
19 chapter 8 for a final major rule subject to subsection (b)  
20 shall be modified as follows:

21              “(1) The time period under section  
22 801(b)(2)(A) shall be 90 days instead of the 45-day  
23 period specified under such subparagraph.

24              “(2) The time period of 20 calendar days under  
25 section 801(i)(3) shall be 30 calendar days.

1           “(3) The requirement under section 801(i)(3)  
2           for 30 Senators on a discharge petition shall be 20  
3           Senators.

4           “(d) Nothing in this section shall be construed to  
5           override any statutory requirement, including health, safe-  
6           ty, and environmental requirements.

7           “§ 624. Judicial review

8           “(a) Compliance or noncompliance by an agency with  
9           the provisions of this subchapter and subchapter III shall  
10          be subject to judicial review only in accordance with this  
11          section.

12          “(b) Any determination by the Director that a rule  
13          is, or is not, a major rule shall not be subject to judicial  
14          review in any manner.

15          “(c) The determination by an agency that a rule is,  
16          or is not, a major rule shall be set aside by a reviewing  
17          court only upon a clear and convincing showing that the  
18          determination is erroneous in light of the information  
19          available to the agency at the time the agency made the  
20          determination.

21          “(d) No claim of noncompliance with this subchapter  
22          or subchapter III shall be reviewed separate or apart from  
23          judicial review of the final agency action to which it re-  
24          lates.

*6/24 - see old memo  
DST memo/ETA.*

1       “(e) A major rule may be set aside or remanded only  
2 if the court finds that—

3               “(1) the agency determination under section  
4 623(a), based on the rulemaking file as a whole, was  
5 arbitrary or capricious or an abuse of discretion (or  
6 unsupported by substantial evidence where that  
7 standard is otherwise provided by law); or

8               “(2) the agency failed to make a determination  
9 required by that subsection.

10       “(f) Any rule determined to be a major rule under  
11 section 622 (a) or (b) for which the cost-benefit analysis  
12 or risk assessment required under this chapter has been  
13 omitted in its entirety, shall be deemed arbitrary or capri-  
14 cious.

15       “(g) Except as otherwise provided in this section, fail-  
16 ure of an agency to comply with the procedural require-  
17 ments of this subchapter or subchapter III shall not pro-  
18 vide grounds for setting aside or remanding the rule under  
19 review unless the court finds that there is a substantial  
20 likelihood that the agency’s failure to comply with such  
21 procedural requirements materially affected the outcome  
22 of the final rule and that such rule, based on the rule-  
23 making record as a whole, is arbitrary, capricious, or an  
24 abuse of discretion (or unsupported by substantial evi-  
25 dence where that standard is otherwise provided by law).

1       “(h) Nothing in this chapter is intended to modify  
2 the rules of statutory construction applied by the courts.

3       **“§ 625. Deadlines for rulemaking**

4       “(a) All deadlines in statutes that require agencies  
5 to propose or promulgate any major rule subject to section  
6 622 or subchapter III during the 2-year period beginning  
7 on the effective date of this section shall be suspended  
8 until the earlier of—

9               “(1) the date on which the requirements of sec-  
10 tion 622 or subchapter III are satisfied; or

11               “(2) the date occurring 6 months after the date  
12 of the applicable deadline.

13       “(b) All deadlines imposed by any court of the United  
14 States that would require an agency to propose or promul-  
15 gate a major rule subject to section 622 or subchapter  
16 III during the 2-year period beginning on the effective  
17 date of this section shall be suspended until the earlier  
18 of—

19               “(1) the date on which the requirements of sec-  
20 tion 622 or subchapter III are satisfied; or

21               “(2) the date occurring 6 months after the date  
22 of the applicable deadline.

23       “(c) In any case in which the failure to promulgate  
24 a major rule by a deadline occurring during the 2-year  
25 period beginning on the effective date of this section would

1 create an obligation to regulate through individual adju-  
2 dications, the deadline shall be suspended until the earlier  
3 of—

4           “(1) the date on which the requirements of sec-  
5 tion 622 or subchapter III are satisfied; or

6           “(2) the date occurring 6 months after the date  
7 of the applicable deadline.

8 **“§ 626. Advisory committee on regulations**

9           “(a)(1) No later than 90 days after the date of enact-  
10 ment of this section and every 5 years thereafter, the head  
11 of each department described under section 632(a) (1)  
12 through (8) and each agency under section 632(a) (9)  
13 through (11) shall establish an advisory committee for the  
14 review of rules.

15           “(2) The head of a department or agency described  
16 under paragraph (1) may establish panels under its advi-  
17 sory committee to facilitate review of rules if the different  
18 parts of the agency affected by this section are so dissimi-  
19 lar that it is impracticable to assemble the required exper-  
20 tise on a single advisory committee. Such panels shall be  
21 governed by the requirements of subsection (b) and section  
22 626 pertaining to advisory committees.

23           “(b)(1) Each such agency head shall appoint 9 mem-  
24 bers to serve on the agency’s advisory committee and shall  
25 designate a chairman from the members of the committee.

1 Membership on the committee shall represent a balanced  
2 cross-section of public and private interests affected by the  
3 regulations of the agency, including small businesses and  
4 small governments. No employee of the Federal Govern-  
5 ment shall serve as a member of a committee under this  
6 section.

7       “(2) Each member shall be appointed for the life of  
8 the advisory committee. The advisory committee shall ter-  
9 minate 1 year after the date on which the committee is  
10 established.

11       “(3) A vacancy on a committee shall be filled in the  
12 same manner as the original appointment.

13       “(4) Each committee shall solicit public participation  
14 through appropriate means including hearings, written  
15 comments, public meetings, and electronic mail.

16       “(5) Members of each committee shall receive travel  
17 expenses, including per diem in lieu of subsistence, in ac-  
18 cordance with sections 5702 and 5703 of this title.

19       “(6) Each committee shall be subject to the provi-  
20 sions of the Federal Advisory Committee Act (5 U.S.C.  
21 App.).

22 **“§ 627. Agency regulatory review**

23       “(a) Each advisory committee appointed under sec-  
24 tion 626 shall develop a list of rules promulgated by the  
25 agency which the committee serves, which the committee

1 determines should be reviewed by the agency and can rea-  
2 sonably be reviewed by the agency within a 5-year period.  
3 In selecting rules for review, each committee shall consider  
4 the extent to which—

5           “(1) a rule may be unnecessary;

6           “(2) a rule is duplicative of other rules of the  
7 agency or other agencies;

8           “(3) the benefits of a rule may not justify the  
9 costs of the rule;

10           “(4) a rule may not be achieving the objective  
11 of the statute on which the rule is based in a cost-  
12 effective manner;

13           “(5) a rule could be revised to achieve the ob-  
14 jective of the statute on which the rule is based with  
15 substantially—

16                   “(A) less costs;

17                   “(B) more benefits; or

18                   “(C) greater flexibility for regulated enti-  
19 ties;

20           “(6) the agency has discretion under the statute  
21 authorizing the rule to modify or repeal the rule;

22           “(7) the rule is important relative to other rules  
23 being reviewed under this section; and

1           “(8) the resources are expected to be available  
2           to the agency to carry out the reviews under this  
3           section.

4           “(b) No later than 6 months after an advisory com-  
5           mittee is established, such committee shall deliver to the  
6           agency the committee’s recommended list of rules to be  
7           reviewed in order of priority. The agency shall immediately  
8           publish the list in the Federal Register and forward a copy  
9           of the list to the appropriate committees of jurisdiction  
10          in the House of Representatives and the Senate.

11          “(c)(1) No later than 60 days after receiving and re-  
12          viewing the list of rules from its committee, the agency  
13          shall publish in the Federal Register a preliminary sched-  
14          ule for review of rules based on such list. The agency shall  
15          give deference to the recommendations of its advisory com-  
16          mittee but may modify the list of rules to be reviewed,  
17          taking into account the factors contained in subsection  
18          (a).

19          “(2) The agency shall provide in the Federal Register  
20          at the time the preliminary schedule is published an expla-  
21          nation of each modification to the list provided by the ad-  
22          visory committee and shall invite public comment on the  
23          preliminary schedule for a period of no less than 60 days.

24          “(d) The preliminary schedule under this subsection  
25          shall propose deadlines for review of each rule listed there-

1 on, and such deadlines shall occur no later than 5 years  
2 from the date of publication of the final schedule.

3 “(e)(1) No later than 120 days after publication of  
4 a preliminary schedule under subsection (c), the agency  
5 shall publish a final schedule of rules to be reviewed by  
6 the agency pursuant to this section.

7 “(2) The schedule shall establish a deadline for com-  
8 pletion of the review of each rule listed on the schedule,  
9 taking into account the criteria in subsection (a) and com-  
10 ments received in the rulemaking. Each deadline shall  
11 occur no later than 5 years from the date of publication  
12 of the final schedule.

13 “(f) Notwithstanding section 624, agency failure to  
14 take the actions required by this section shall be subject  
15 to judicial review only under section 706(1) of this title.  
16 There shall be no judicial review of the preliminary or final  
17 schedule.

18 “(g)(1) For each rule on the schedule under sub-  
19 section (e), the agency shall—

20 “(A) no later than 2 years before the deadline  
21 in such schedule, publish in the Federal Register a  
22 notice that solicits public comment regarding wheth-  
23 er the rule should be continued, amended, or re-  
24 pealed;

22-24 -  
Two comment letters  
from DDC and HIC to  
agency. DOT

1           “(B) no later than 1 year before the deadline  
2 in such schedule, publish in the Federal Register a  
3 notice that—

4           “(i) addresses public comments generated  
5 by the notice in subparagraph (A);

6           “(ii) contains a preliminary analysis by the  
7 agency with respect to subsection (a) (1), (2),  
8 (3), (4), and (5);

9           “(iii) contains a preliminary determination  
10 whether the rule should be continued, amended,  
11 or repealed; and

12           “(iv) solicits public comment on the pre-  
13 liminary determination for the rule; and

14           “(C) no later than 60 days before the deadline  
15 in such schedule, publish in the Federal Register a  
16 final notice on the rule that—

17           “(i) addresses public comments generated  
18 by the notice in subsection (c);

19           “(ii) contains a determination to continue,  
20 amend, or repeal the rule and an explanation of  
21 such determination with respect to subsection  
22 (a) (1), (2), (3), (4), and (5); and

23           “(iii) if the agency determines to amend or  
24 repeal the rule, contains a notice of proposed  
25 rulemaking under section 553.

*Deadlines - too soon?*

1       “(2) If the final determination of the agency is to  
2 continue the rule, such determination shall constitute final  
3 agency action 60 days after the publication in the Federal  
4 Register of the notice in subparagraph (C).

5       “(h) If an agency makes a determination to amend  
6 or repeal a major rule under subsection (g)(1)(C), the  
7 agency shall complete final agency action with regard to  
8 such rule no later than 2 years of the date of publication  
9 of the notice in subsection (g)(1)(C) containing such de-  
10 termination. Nothing in this subsection shall limit the dis-  
11 cretion of an agency to decide, after having proposed to  
12 modify or repeal a major rule, not to promulgate such  
13 modification or repeal. Such decision shall constitute final  
14 agency action for the purposes of judicial review.

15       “(i) If an agency has not completed review of the rule  
16 5 years from the publication of the final schedule pursuant  
17 to subsection (c), the agency shall immediately commence  
18 a rulemaking action pursuant to section 553 to repeal the  
19 rule. The agency shall complete such rulemaking within  
20 2 years of the deadline established under subsection (e).

21       “(j) A court may remand a determination under sub-  
22 section (g)(1)(C) only upon a clear and convincing show-  
23 ing that the agency could have adopted a reasonable alter-  
24 native that is substantially more flexible or cost-effective

*DoT -  
Need more  
protection -  
after IR here.  
Some fixes.*

*in admin  
recumb.*

1 or that would substantially decrease costs or increase ben-  
2 efits while meeting the objectives of the rulemaking.

3 "SUBCHAPTER III—RISK ASSESSMENTS

4 "§ 631. Definitions

5 "For purposes of this subchapter, the definitions  
6 under sections 551 and 621 shall apply, and—

7 "(1) the term 'assumption' means a reasonably  
8 accepted principle, theory, or assertion that is reli-  
9 able, relevant, and objective which may reasonably  
10 be used when relevant and adequate information  
11 about the specific site or substance is unavailable;

12 "(2) the term 'covered agency' means each  
13 agency required to comply with this subchapter, as  
14 provided in section 632;

15 "(3) the term 'emergency' means an imminent  
16 or substantial endangerment to human health, safe-  
17 ty, or the environment;

18 "(4) the term 'exposure assessment' means the  
19 scientific determination of the intensity, frequency,  
20 distribution, and duration of actual or reasonably  
21 foreseeable exposures to the hazard in question;

22 "(5) the term 'hazard assessment' means the  
23 scientific determination of whether a substance, ac-  
24 tivity, or condition can cause an increased incidence  
25 of one or more significant adverse effects, and a sci-

1       entific evaluation of the relationship between the de-  
2       gree of exposure to the substance, activity, or condi-  
3       tion and the incidence and severity of the effect;

4               “(6) the term ‘risk assessment’ means the sys-  
5       tematic process of organizing hazard and exposure  
6       assessments to estimate the potential for specific  
7       harm to an exposed individual, population, or natu-  
8       ral resource;

9               “(7) the term ‘risk characterization’ means the  
10       presentation of risk assessment results including, to  
11       the extent feasible, a characterization of the dis-  
12       tribution of risk as well as an analysis of uncertain-  
13       ties, variabilities, conflicting information, and infer-  
14       ences and assumptions in the assessments;

15               “(8) the term ‘screening analysis’ means an  
16       analysis using simple assumptions to arrive at an es-  
17       timate of upper and lower bounds of risk as appro-  
18       priate; and

19               “(9) the term ‘substitution risk’ means an in-  
20       creased risk to human health, safety, or the environ-  
21       ment reasonably likely to result directly from a regu-  
22       latory option.

23       **“§ 632. Applicability**

24               “(a) Except as provided in subsection (c), this sub-  
25       chapter shall apply to all risk assessments prepared in

*a primary purpose of which is to S.L.C.*

1 connection with a major rule addressing health, safety,  
2 and environmental risks by—

3 “(1) the Secretary of Defense, for environ-  
4 mental restoration and waste management pro-  
5 grams, and for programs and responsibilities of the  
6 United States Army Corps of Engineers;

7 “(2) the Secretary of the Interior, for programs  
8 and responsibilities of the Office of Surface Mining  
9 Reclamation and Enforcement;

10 “(3) the Secretary of Agriculture, for programs  
11 and responsibilities of—

12 “(A) the Animal and Plant Health Inspec-  
13 tion Service;

14 “(B) the Grain Inspection, Packers, and  
15 Stockyards Administration;

16 “(C) the Food Safety and Inspection Serv-  
17 ice;

18 “(D) the Forest Service; and

19 “(E) the Natural Resources Conservation  
20 Service;

21 “(4) the Secretary of Commerce, for programs  
22 and responsibilities of the National Marine Fisheries  
23 Service;

24 “(5) the Secretary of Labor, for programs and  
25 responsibilities of—

1           “(A) the Occupational Safety and Health  
2           Administration; and

3           “(B) the Mine Safety and Health Adminis-  
4           tration;

5           “(6) the Secretary of Health and Human Serv-  
6           ices, for programs and responsibilities assigned to  
7           the Food and Drug Administration;

8           “(7) the Secretary of Transportation, for pro-  
9           grams and responsibilities assigned to—

10           “(A) the Federal Aviation Administration;  
11           and

12           “(B) the National Highway Traffic Safety  
13           Administration;

14           “(8) the Secretary of Energy, for programs and  
15           responsibilities related to nuclear safety, occupa-  
16           tional safety and health, and environmental restora-  
17           tion and waste management;

18           “(9) the Chairman of the Consumer Product  
19           Safety Commission;

20           “(10) the Administrator of the Environmental  
21           Protection Agency; and

22           “(11) the Chairman of the Nuclear Regulatory  
23           Commission.

24           “(b)(1) No later than 18 months after the effective  
25           date of this section, the President, acting through the Di-

1 rector of the Office of Management and Budget, shall de-  
2 termine whether any other Federal agency or specific pro-  
3 gram under a Federal agency should be considered a cov-  
4 ered agency. Such determination, with respect to a par-  
5 ticular Federal agency or program, shall be based on the  
6 importance of risk assessment and risk characterization  
7 to—

8           “(A) regulatory programs administered by that  
9           agency; and

10           “(B) the communication of risk information by  
11           that agency to the public.

12           “(2) If the President makes a determination under  
13 paragraph (1), the requirements of this subchapter shall  
14 apply to any agency determined to be a covered agency  
15 beginning on a date set by the President. Such date may  
16 be no later than 6 months after the date of such deter-  
17 mination.

18           “(c)(1) This subchapter shall not apply to risk assess-  
19 ments performed with respect to—

20           “(A) an emergency determined by the head of  
21           an agency;

22           “(B) a health, safety, or environmental inspec-  
23           tion, compliance or enforcement action, or individual  
24           facility permitting action; or

25           “(C) a screening analysis.

1       “(2) This subchapter shall not apply to the require-  
2 ments of any food, drug, or other product label, or to any  
3 risk characterization appearing on any such label.

4       “(3) If a risk assessment under this subchapter is  
5 otherwise required by this section, but the agency deter-  
6 mines that—

7               “(A) a final rule subject to this subchapter is  
8 substantially similar to the proposed rule with re-  
9 spect to the risk being addressed;

10              “(B) a risk assessment for the proposed rule  
11 has been carried out in a manner substantially con-  
12 sistent with this subchapter; and

13              “(C) a new risk assessment for the final rule is  
14 not required in order to respond to comments re-  
15 ceived during the period for comment on the pro-  
16 posed rule, the agency may publish such determina-  
17 tion along with the final rule in lieu of preparing a  
18 new risk assessment for the final rule.

19 **“§ 633. Savings provisions**

20       “Nothing in this subchapter shall be construed to—

21              “(1) modify any statutory standard or require-  
22 ment designed to protect human health, safety, or  
23 the environment; or

24              “(2) require the disclosure of any trade secret  
25 or other confidential information.

1 **“§ 634. Principles for risk assessments**

2 “(a) Each agency shall design and conduct risk as-  
3 sessments for each proposed and final major rule in a  
4 manner that promotes rational and informed risk manage-  
5 ment decisions and informed public input into and under-  
6 standing of the process of making agency decisions.

} same as 27

7 “(b) Each agency shall consider in each risk assess-  
8 ment reliable and reasonably available scientific informa-  
9 tion and shall describe the basis for selecting such sci-  
10 entific information.

to extent practicable

Take into  
account w/ def  
of assump?

11 “(c)(1) Each agency may use assumptions, including  
12 inferences, models, or safety factors, unless relevant and  
13 adequate scientific information, including site-specific or  
14 substance-specific information, is available which materi-  
15 ally affects the agency decision.

16 “(2) When a risk assessment involves choice of as-  
17 sumptions, the agency shall—

18 “(A) identify the assumption and its scientific  
19 or policy basis, including the extent to which the as-  
20 sumption has been validated by, or conflicts with,  
21 empirical data;

22 “(B) explain the basis for any choices among  
23 assumptions and, where applicable, the basis for  
24 combining multiple assumptions; and

25 “(C) describe reasonable alternative assump-  
26 tions that were not selected by the agency for use

1 in the risk assessment, and the rationale for not  
2 using such alternatives.

3 “(3) An agency shall not inappropriately combine  
4 multiple assumptions.

EPA  
limit to JR?  
Just say explicitly  
ID each assump.

5 “(4) Each agency shall, after notice and public com-  
6 ment, publish guidelines for choosing assumptions and for  
7 deciding when and how in a specific risk assessment to  
8 adopt alternative assumptions or to use available scientific  
9 information to modify or replace an assumption.

10 “(d) Each risk assessment supporting a major rule,  
11 shall include, as appropriate, each of the following:

12 “(1) A description of the hazard of concern.

13 “(2) A description of the populations or natural  
14 resources that are the subject of the risk assess-  
15 ment.

16 “(3) An explanation of the exposure scenarios  
17 used in the risk assessment, including an estimate of  
18 the corresponding population at risk and the likeli-  
19 hood of such exposure scenarios.

20 “(4) A description of the nature and severity of  
21 the harm that could reasonably occur.

22 “(5) A description of the major uncertainties in  
23 each component of the risk assessment and their in-  
24 fluence on the results of the assessment.

1       “(e) To the extent scientifically appropriate, each  
2 agency shall—

3               “(1) express the overall estimate of risk as one  
4 or more ranges or probability distributions that re-  
5 flect variabilities and uncertainties in the analysis;

6               “(2) provide the range and distribution of risks  
7 and the corresponding exposure scenarios, identify-  
8 ing the range and distribution and likelihood of risk  
9 to the general population and to more highly ex-  
10 posed or sensitive subpopulations; and

11               “(3) where quantitative estimates are not avail-  
12 able, describe the qualitative factors influencing the  
13 range, distribution, and likelihood of possible risks.

14       “(f) When scientific information that permits rel-  
15 evant comparisons of risk is reasonably available, the  
16 agency shall use the information to place the nature and  
17 magnitude of a risk to human health, safety, and the envi-  
18 ronment being analyzed in relationship to other risks.  
19 Such comparisons should consider relevant distinctions  
20 among risks, such as the voluntary or involuntary nature  
21 of risks.

22       “(g) When scientifically appropriate information or  
23 significant substitution risks to human health, safety, or  
24 the environment is reasonably available to the agency, the  
25 agency shall describe such risks in the risk assessment.

S.L.C. Q-How bad is  
risk section?  
Try taking it  
out altogether?  
Or clear up?  
Crazy - if this is  
reviewable, it's  
bad.

1 **“§ 635. Judicial review**

2 “The provisions of section 624 relating to judicial re-  
3 view shall apply to this subchapter.

4 **“§ 636. Deadlines for rulemaking**

5 “The provisions of section 625 relating to deadlines  
6 for rulemaking shall apply to this subchapter.

7 **“SUBCHAPTER IV—QUALITY ASSURANCE AND**  
8 **RESEARCH PROGRAMS**

9 **“§ 641. Definitions**

10 “For purposes of this subchapter, the definitions  
11 under sections 551 and 621 shall apply.

12 **“§ 642. Peer review**

13 “(a) Each covered agency shall develop a systematic  
14 program for independent and external peer review re-  
15 quired under subsection (b). Such program shall be appli-  
16 cable throughout each covered agency and—

17 “(1)(A) shall provide for the creation or utiliza-  
18 tion of peer review panels, expert bodies, or other  
19 formal or informal devices that are balanced and  
20 that consist of members with expertise relevant to  
21 the sciences involved in regulatory decisions and who  
22 are independent of the covered agency; and

23 “(B) be broadly representative and balanced  
24 and, to the extent relevant and appropriate, may in-  
25 clude persons affiliated with Federal, State, local, or  
26 tribal governments, small businesses, other rep-

1 representatives of industry, universities, agriculture,  
2 labor consumers, conservation organizations, or  
3 other public interest groups and organizations;

4       “(2) may exclude any person with substantial  
5 and relevant expertise as a panel member on the  
6 basis that such person represents an entity that may  
7 have a potential financial interest in the outcome, or  
8 may include such person if such interest is fully dis-  
9 closed to the agency, and in the case of a regulatory  
10 decision affecting a single entity, no peer reviewer  
11 representing such entity may be included on the  
12 panel;

13       “(3) shall provide for a timely completed peer  
14 review, meeting agency deadlines, that contains a  
15 balanced presentation of all considerations, including  
16 minority reports and an agency response to all sig-  
17 nificant peer review comments; and

18       “(4) shall provide adequate protections for con-  
19 fidential business information and trade secrets, in-  
20 cluding requiring panel members to enter into con-  
21 fidentiality agreements.

22       “(b)(1) Each covered agency shall provide for peer  
23 review in accordance with this section of any risk assess-  
24 ment that forms the basis of any major rule that addresses  
25 risks to the environment, health, or safety.

1       “(2) The Director may order that peer review be pro-  
2 vided for any risk assessment that is likely to have a sig-  
3 nificant impact on public policy decisions or would estab-  
4 lish an important precedent.

5       “(c) All peer review written comments or conclusions  
6 and the agency’s written responses shall be made available  
7 to the public and shall be made part of the administrative  
8 record for purposes of judicial review of any final agency  
9 action.

10       “(d) No peer review shall be required under this sec-  
11 tion for any data, method, document, or assessment, or  
12 any component thereof, which has been previously sub-  
13 jected to peer review.

14       “(e) The requirements of this ~~sub~~section shall not  
15 apply to a rulemaking where the head of an agency has  
16 published a determination, with the concurrence of the Ad-  
17 ministrator of the Office of Information and Regulatory  
18 Affairs, and notified the Congress, that the rulemaking  
19 process followed by that agency provides sufficient oppor-  
20 tunity for scientific or technical review of risk assessments  
21 required by this subchapter.

22       “§ 643. Guidelines

23       “(a) As soon as practicable, each covered agency shall  
24 adopt, after notice and public comment, guidelines to im-  
25 plement the cost-benefit analysis requirements under sec-

1 tion 622, and the risk assessment principles under section  
2 634.

3 “(b) The development, issuance, and publication of  
4 guidelines under this section shall not be subject to judi-  
5 cial review.

6 “(c) Each covered agency shall publish, after notice  
7 and public comment, guidelines for the conduct of risk as-  
8 sessments not required by this subchapter that adapt the  
9 principles of this subchapter in a manner consistent with  
10 section 634(a)(2) and the risk assessment and risk man-  
11 agement needs of the agency.

12 **“§ 644. Research, training, and coordination**

13 “(a) To promote the conduct, application, and prac-  
14 tice of cost-benefit analysis and risk assessment in a con-  
15 sistent manner and to identify agency data and research  
16 needs, the Director, in consultation with the Office of  
17 Science and Technology Policy, shall—

18 “(1) oversee periodic evaluations of Federal  
19 agency cost-benefit analysis and risk assessment in-  
20 cluding, where relevant and appropriate, research  
21 needs to—

22 “(A) reduce generic data gaps, to address  
23 modeling needs (including improved model sen-  
24 sitivity), and to validate assumptions, particu-

1 larly those common to multiple cost-benefit  
2 analyses and risk assessments;

3 “(B) improve methods to quantify and  
4 communicate uncertainty and variability among  
5 individuals, species, populations and ecological  
6 communities;

7 “(C) examine emerging and future areas of  
8 research in cost-benefit analysis; and

9 “(D) examine emerging and future areas  
10 of research in risk assessment;

11 “(2) oversee periodic evaluations of Federal  
12 agency needs to adequately train individuals in cost-  
13 benefit analysis and risk assessment, including esti-  
14 mates of the resources needed to provide necessary  
15 training;

16 “(3) provide advice and recommendations to the  
17 President and Congress based on the evaluations  
18 conducted under paragraphs (1) and (2);

19 “(4) establish appropriate interagency mecha-  
20 nisms to improve the consistency of cost-benefit  
21 analysis and risk assessment among Federal agen-  
22 cies; and

23 “(5) establish appropriate mechanisms between  
24 Federal and State agencies to improve cooperation

1 in the development and application of cost-benefit  
2 analysis and risk assessment.

3 **“§ 645. Judicial review**

4 “There shall be no judicial review of agency decisions  
5 or actions made under this subchapter.

6 **“SUBCHAPTER V—EXECUTIVE OVERSIGHT**

7 **“§ 651. Definitions**

8 “For purposes of this subchapter—

9 “(1) the definitions under sections 551 and 621  
10 shall apply; and

11 “(2) the term ‘regulatory action’ means any one  
12 of the following:

13 “(A) An agenda or schedule for  
14 rulemakings.

15 “(B) Advance notice of proposed rule-  
16 making.

17 “(C) Notice of proposed rulemaking.

18 “(D) Proposed final rulemaking and in-  
19 terim final rulemaking.

20 **“§ 652. Presidential regulatory review**

21 “(a) The President shall establish a process for the  
22 review and coordination of Federal agency regulatory ac-  
23 tions. Such process shall be the responsibility of the Direc-  
24 tor.

1       “(b) For the purpose of carrying out the review es-  
2     tablished under subsection (a), the Director shall—

3               “(1) develop and oversee uniform regulatory  
4     policies and procedures, including those by which  
5     each agency shall comply with the requirements of  
6     this chapter;

7               “(2) develop policies and procedures for the re-  
8     view of regulatory actions by the Director;

9               “(3) develop and oversee an annual govern-  
10    mentwide regulatory planning process that shall in-  
11    clude review of planned agency major rules and  
12    other significant regulatory actions and publication  
13    of—

14                   “(A) a summary of and schedule for pro-  
15    mulgation of planned agency major rules;

16                   “(B) agency specific schedules for review  
17    of existing rules under section 627; and

18                   “(C) a summary of regulatory review ac-  
19    tions undertaken in the prior year.

20       “(c) The review established under subsection (a) shall  
21    be conducted as expeditiously as practicable and the re-  
22    view of any regulatory action shall be limited to no more  
23    than 90 days.

1 **“§ 653. Public disclosure of information**

2 “The Director, in carrying out the provisions of sec-  
3 tion 652, shall establish procedures to provide public and  
4 agency access to information concerning regulatory review  
5 actions, including—

6 “(1) disclosure to the public on an ongoing  
7 basis of information regarding the status of regu-  
8 latory actions undergoing review;

9 “(2) disclosure to the public, no later than pub-  
10 lication of a regulatory action, of—

11 “(A) all written communications, regard-  
12 less of form or format, including drafts of all  
13 proposals and associated analyses, between the  
14 Director or employees of the Director and the  
15 regulatory agency;

16 “(B) all written communications, regard-  
17 less of form or format, between the Director or  
18 employees of the Director and any person not  
19 employed by the executive branch of the Fed-  
20 eral Government relating to the substance of a  
21 regulatory action;

22 “(C) a record of all oral communications  
23 relating to the substance of a regulatory action  
24 between the Director or employees of the Direc-  
25 tor and any person not employed by the execu-  
26 tive branch of the Federal Government; and

1           “(D) a written explanation of any review  
2           action and the date of such action; and

3           “(3) disclosure to the regulatory agency, on a  
4           timely basis, of—

5           “(A) all written communications between  
6           the Director or employees of the Director and  
7           any person who is not employed by the execu-  
8           tive branch of the Federal Government;

9           “(B) a record of all oral communications,  
10          and an invitation to participate in meetings, re-  
11          lating to the substance of a regulatory action  
12          between the Director or employees of the Direc-  
13          tor and any person not employed by the execu-  
14          tive branch of the Federal Government; and

15          “(C) a written explanation of any review  
16          action taken concerning an agency regulatory  
17          action.

18 **“§ 654. Judicial review**

19          “The exercise of the authority granted under this  
20          subchapter by the Director or the President shall not be  
21          subject to judicial review in any manner.”.

22          **(b) REGULATORY FLEXIBILITY ANALYSIS.—**

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

1 **“§ 611. Judicial review**

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

5 “(i) 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 “(ii) prepared a final regulatory flexibility anal-  
9 ysis 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 the terms of this subsection. A court having jurisdiction  
13 to review such rule for compliance with the provisions of  
14 section 553 or under any other provision of law shall have  
15 jurisdiction to review such certification or analysis. In the  
16 case where an agency delays the issuance of a final regu-  
17 latory flexibility analysis pursuant to section 608(b), a pe-  
18 tition for judicial review under this subsection shall be  
19 filed not later than one year after the date the analysis  
20 is made available to the public.

21 “(B) If a provision of law requires that an action  
22 challenging a final agency rule be commenced before the  
23 expiration of such one-year period, such lesser period shall  
24 apply to a petition for judicial review under this section  
25 and, if an agency delays the issuance of a final regulatory  
26 flexibility analysis pursuant to section 608(b), such period

1 shall run from the date such analysis was made available  
2 to the public.

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

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

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

18       “(B) In the case where the agency prepared a final  
19 regulatory flexibility analysis, the court may order the  
20 agency to take corrective action consistent with the re-  
21 quirements of section 604 if the court determines, on the  
22 basis of the rulemaking record, that the final regulatory  
23 flexibility analysis was prepared by the agency without ob-  
24 servance of procedure required by section 604.

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

5               “(A) to prepare the analysis required by section  
6       604; or

7               “(B) to take corrective action consistent with  
8       the requirements of section 604,  
9 the court may stay the rule or grant such other relief as  
10 it deems appropriate.

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

14       “(b) In an action for the judicial review of a rule,  
15 any regulatory flexibility analysis for such rule (including  
16 an analysis prepared or corrected pursuant to subsection  
17 (a)(4)) shall constitute part of the whole record of agency  
18 action in connection with such review.

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

23               (2) EFFECTIVE DATE.—The amendment made  
24 by paragraph (1) shall take effect on the effective  
25 date of this Act, except that the judicial review au-

1       thorized by section 611(a) of title 5, United States  
2       Code (as added by subsection (a)), shall apply only  
3       to final agency rules issued after such effective date.

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

10       (d) **TECHNICAL AND CONFORMING AMENDMENTS.**—

11               (1) Part I of title 5, United States Code, is  
12       amended by striking out the chapter heading and  
13       table of sections for chapter 6 and inserting in lieu  
14       thereof the following:

15                       **“CHAPTER 6—THE ANALYSIS OF**  
16                       **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 analysis.

“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 RULES**

“621. Definitions.

“622. Regulatory analysis.

“623. Decisional criteria.

- "624. Judicial review.
- "625. Deadlines for rulemaking.
- "626. Advisory committee on regulations.
- "627. Agency regulatory review.

**"SUBCHAPTER III—RISK ASSESSMENTS**

- "631. Definitions.
- "632. Applicability.
- "633. Savings provisions.
- "634. Principles for risk assessments.
- "635. Judicial review.
- "636. Deadlines for rulemaking.

**"SUBCHAPTER IV—QUALITY ASSURANCE AND RESEARCH PROGRAMS FOR COST-BENEFIT ANALYSIS AND RISK ASSESSMENT**

- "641. Definitions.
- "642. Peer review.
- "643. Guidelines.
- "644. Research, training, and coordination.
- "645. Judicial review.

**"SUBCHAPTER V—EXECUTIVE OVERSIGHT**

- "651. Definitions.
- "652. Presidential regulatory review.
- "653. Public disclosure of information.
- "654. Judicial review."

1           (2) Chapter 6 of title 5, United States Code, is  
2           amended by inserting immediately before section  
3           601, the following subchapter heading:

4           **"SUBCHAPTER I—REGULATORY ANALYSIS".**

5           **SEC. 5. CONGRESSIONAL REVIEW.**

6           (a) IN GENERAL.—Part I of title 5, United States  
7           Code, is amended by inserting after chapter 7 the follow-  
8           ing new chapter:

9           **"CHAPTER 8—CONGRESSIONAL REVIEW**  
10           **OF AGENCY RULEMAKING**

11          **"§ 801. Congressional review of agency rulemaking**

12          **"(a) For purposes of this chapter, the term—**

1           “(1) ‘major rule’ means a major rule as defined  
2           under section 621(5) of this title and as determined  
3           under section 622 of this title; and

4           “(2) ‘rule’ (except in reference to a rule of the  
5           Senate or House of Representatives) is a reference  
6           to a major rule.

7           “(b)(1) Upon the promulgation of a final major rule,  
8           the agency promulgating such rule shall submit to the  
9           Congress a copy of the rule, the statement of basis and  
10          purpose for the rule, and the proposed effective date of  
11          the rule.

12          “(2) A rule submitted under paragraph (1) shall not  
13          take effect as a final rule before the latest of the following:

14               “(A) The later of the date occurring 45 days  
15               (or 180 days as provided under section 623(d)) after  
16               the date on which—

17                       “(i) the Congress receives the rule submit-  
18                       ted under paragraph (1); or

19                       “(ii) the rule is published in the Federal  
20                       Register.

21               “(B) If the Congress passes a joint resolution  
22               of disapproval described under subsection (i) relating  
23               to the rule, and the President signs a veto of such  
24               resolution, the earlier date—

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

4           “(ii) occurring 30 session days after the  
5 date on which the Congress received the veto  
6 and objections of the President.

7           “(C) The date the rule would have otherwise  
8 taken effect, if not for this section (unless a joint  
9 resolution of disapproval under subsection (i) is ap-  
10 proved).

11          “(c) A major rule shall not take effect as a final rule  
12 if the Congress passes a joint resolution of disapproval de-  
13 scribed under subsection (i), which is signed by the Presi-  
14 dent or is vetoed and overridden by the Congress.

15          “(d)(1) Notwithstanding any other provision of this  
16 section (except subject to paragraph (2)), a major rule  
17 that would not take effect by reason of this section may  
18 take effect if the President makes a determination and  
19 submits written notice of such determination to the Con-  
20 gress that the major rule should take effect because such  
21 major rule is—

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

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

1           “(C) necessary for national security.

2           “(2) An exercise by the President of the authority  
3 under this subsection shall have no effect on the proce-  
4 dures under subsection (i) or the effect of a joint resolu-  
5 tion of disapproval under this section.

6           “(e)(1) Subsection (i) shall apply to any major rule  
7 that is promulgated as a final rule during the period be-  
8 ginning on the date occurring 60 days before the date the  
9 Congress adjourns sine die through the date on which the  
10 succeeding Congress first convenes.

11          “(2) For purposes of subsection (i), a major rule de-  
12 scribed under paragraph (1) shall be treated as though  
13 such rule were published in the Federal Register (as a rule  
14 that shall take effect as a final rule) on the date the suc-  
15 ceeding Congress first convenes.

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

21          “(f) Any rule that takes effect and later is made of  
22 no force or effect by the enactment of a joint resolution  
23 under subsection (i) shall be treated as though such rule  
24 had never taken effect.

1       “(g) If the Congress does not enact a joint resolution  
2 of disapproval under subsection (i), no court or agency  
3 may infer any intent of the Congress from any action or  
4 inaction of the Congress with regard to such major rule,  
5 related statute, or joint resolution of disapproval.

6       “(h) If the agency fails to comply with the require-  
7 ments of subsection (b) for any rule, the rule shall cease  
8 to be enforceable against any person.

9       “(i)(1) For purposes of this subsection, the term  
10 ‘joint resolution’ means only a joint resolution introduced  
11 after the date on which the rule referred to in subsection  
12 (b) is received by Congress the matter after the resolving  
13 clause of which is as follows: ‘That Congress disapproves  
14 the rule submitted by the \_\_\_\_\_ relating to  
15 \_\_\_\_\_, and such rule shall have no force or ef-  
16 fect.’ (The blank spaces being appropriately filled in.)

17       “(2)(A) In the Senate, a resolution described in para-  
18 graph (1) shall be referred to the committees with jurisdic-  
19 tion. Such a resolution shall not be reported before the  
20 eighth day after its submission or publication date.

21       “(B) For purposes of this subsection, the term ‘sub-  
22 mission or publication date’ means the later of the date  
23 on which—

24               “(i) the Congress receives the rule submitted  
25               under subsection (b)(1); or

1           “(ii) the rule is published in the Federal Reg-  
2           ister.

3           “(3)(A) In the Senate, if the committee to which a  
4 resolution described in paragraph (1) is referred has not  
5 reported such resolution (or an identical resolution) at the  
6 end of 20 calendar days after its submission or publication  
7 date, such committee may be discharged on a petition ap-  
8 proved by 30 Senators from further consideration of such  
9 resolution and such resolution shall be placed on the Sen-  
10 ate calendar.

11          “(B) The requirements of this paragraph shall be  
12 modified in accordance with section 623(d).

13          “(4)(A) In the Senate, when the committee to which  
14 a resolution is referred has reported, or when a committee  
15 is discharged (under paragraph (3)) from further consid-  
16 eration of, a resolution described in paragraph (1), it shall  
17 at any time thereafter be in order (even though a previous  
18 motion to the same effect has been disagreed to) for any  
19 Senator to move to proceed to the consideration of the  
20 resolution, and all points of order against the resolution  
21 (and against consideration of the resolution) shall be  
22 waived. The motion shall be privileged in the Senate and  
23 shall not be debatable. The motion shall not be subject  
24 to amendment, or to a motion to postpone, or to a motion  
25 to proceed to the consideration of other business. A motion

1 to reconsider the vote by which the motion is agreed to  
2 or disagreed to shall not be in order. If a motion to pro-  
3 ceed to the consideration of the resolution is agreed to,  
4 the resolution shall remain the unfinished business of the  
5 Senate until disposed of.

6       “(B) In the Senate, debate on the resolution, and on  
7 all debatable motions and appeals in connection therewith,  
8 shall be limited to not more than 10 hours, which shall  
9 be divided equally between those favoring and those oppos-  
10 ing the resolution. A motion further to limit debate shall  
11 be in order and shall not be debatable. An amendment  
12 to, or a motion to postpone, or a motion to proceed to  
13 the consideration of other business, or a motion to recom-  
14 mit the resolution shall not be in order. A motion to recon-  
15 sider the vote by which the resolution is agreed to or dis-  
16 agreed to shall not be in order.

17       “(C) In the Senate, immediately following the conclu-  
18 sion of the debate on a resolution described in paragraph  
19 (1), and a single quorum call at the conclusion of the de-  
20 bate if requested in accordance with the Senate rules, the  
21 vote on final passage of the resolution shall occur.

22       “(D) Appeals from the decisions of the Chair relating  
23 to the application of the rules of the Senate to the proce-  
24 dure relating to a resolution described in paragraph (1)  
25 shall be decided without debate.

1           “(5) If, before the passage in the Senate of a resolu-  
2 tion described in paragraph (1), the Senate receives from  
3 the House of Representatives a resolution described in  
4 paragraph (1), then the following procedures shall apply:

5           “(A) The resolution of the House of Represent-  
6 atives shall not be referred to a committee.

7           “(B) With respect to a resolution described in  
8 paragraph (1) of the Senate—

9           “(i) the procedure in the Senate shall be  
10 the same as if no resolution had been received  
11 from the other House; but

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

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

15           “(A) as an exercise of the rulemaking power of  
16 the Senate and as such it is deemed to be a part of  
17 the rules of the Senate and it supersedes other rules  
18 only to the extent that it is inconsistent with such  
19 rules; and

20           “(B) with full recognition of the constitutional  
21 right of either House to change the rules (so far as  
22 relating to the procedure of that House) at any time,  
23 in the same manner, and to the same extent as in  
24 the case of any other rule of that House.

1       “(j) No requirements under this chapter shall be sub-  
2 ject to judicial review in any manner.”.

3       (b) TECHNICAL AND CONFORMING AMENDMENT.—

4 The table of chapters for part I of title 5, United States  
5 Code, is amended by inserting after the item relating to  
6 chapter 7 the following:

      “8. Congressional Review of Agency Rulemaking ..... 801”.

7       SEC. 6. RISK-BASED PRIORITIES.

8       (a) DEFINITIONS.—For the purposes of this section:

9               (1) COMPARATIVE RISK ANALYSIS.—The term  
10 “comparative risk analysis” means a process to sys-  
11 tematically estimate and compare the extent and se-  
12 verity of risks.

13              (2) COVERED AGENCY.—The term “covered  
14 agency” means any agency specified in section 632  
15 of title 5, United States Code.

16              (3) DIRECTOR.—The term “Director” means  
17 the Director of the Office of Management and Budg-  
18 et.

19       (b) DEPARTMENT AND AGENCY PROGRAM GOALS.—

20              (1) SETTING PRIORITIES.—In exercising au-  
21 thority under applicable laws protecting human  
22 health, safety, or the environment, the head of each  
23 covered agency shall set priorities for the reduction  
24 of risks to human health, safety, and the environ-  
25 ment, based upon—

1 (A) an evaluation and comparison of risks  
2 to human health, safety, or the environment  
3 within the jurisdiction of the covered agency;

4 (B) the comparative risk analysis con-  
5 ducted under subsection (d);

6 (C) statutory requirements;

7 (D) the availability of cost-effective risk re-  
8 duction measures; and

9 (E) the consideration of equity and other  
10 appropriate policy objectives.

11 (2) BUDGET AND PLANNING PRIORITIES.—The  
12 head of each covered agency shall incorporate the  
13 priorities identified under paragraph (1) into the  
14 agency budget and strategic, regulatory, enforce-  
15 ment, and research planning. Budget and planning  
16 documents submitted to the President, Congress or  
17 the public shall explain the basis for such priorities  
18 and how the agency will carry out such priorities.

19 (3) EFFECTIVE DATE.—This subsection shall  
20 take effect 12 months after the date of enactment  
21 of this Act.

22 (c) TECHNICAL GUIDANCE.—No later than 180 days  
23 after the effective date of this Act, the Director, in con-  
24 sultation with the heads of covered agencies shall enter  
25 into a contract with the National Academy of Sciences to

1 provide technical guidance to agencies on approaches to  
2 using comparative risk analysis in setting human health,  
3 safety, and environmental protection priorities to assist  
4 agencies in complying with subsection (b).

5 (d) COMPARATIVE RISK ANALYSIS.—

6 (1) REQUIREMENT.—No later than 180 days  
7 after the effective date of this Act, the Director, in  
8 consultation with the Office of Science and Tech-  
9 nology Policy, shall enter into appropriate arrange-  
10 ments with the National Academy of Sciences to  
11 conduct—

12 (A) a comparative risk analysis of risks to  
13 human health, safety, or the environment that  
14 are or could be subject to programs adminis-  
15 tered by all covered agencies; and

16 (B) a study of methodologies for using  
17 comparative risk analysis to compare dissimilar  
18 risks to human health, safety, and environment.

19 (2) CRITERIA.—The Director shall ensure that  
20 the analysis and study required under paragraph

21 (1)—

22 (A) identify relevant attributes of risk;

23 (B) provide the President and covered  
24 agencies guidance on the use of comparative  
25 risk analysis to assist in allocating resources

1 across agencies and among programs to set pri-  
2 orities for the reduction of risk to human  
3 health, safety, and the environment; and

4 (C) are conducted through an open process  
5 involving a balanced group of individuals with  
6 relevant expertise, peer review, and opportuni-  
7 ties for public comment.

8 (3) COMPLETION AND REVIEW.—No later than  
9 3 years after the effective date of this Act, the anal-  
10 ysis and study required under paragraph (1) shall be  
11 completed and submitted to Congress and the Presi-  
12 dent. The analysis and study shall be reviewed and  
13 revised as appropriate and in a manner consistent  
14 with this subsection, but no less than every 10 years.

15 (e) REPORTS AND RECOMMENDATIONS TO CON-  
16 GRESS.—No later than 2 years after the effective date of  
17 this Act, the President shall submit a report to Con-  
18 gress—

19 (1) detailing agency compliance with subsection  
20 (b), including the reasons for any noncompliance;  
21 and

22 (2) recommending changes to any laws or other  
23 lawful requirements that would assist the covered  
24 agency to set priorities to more effectively and effi-

1       ciently reduce risks to human health, safety, and the  
2       environment.

3       (f) SAVINGS PROVISION AND JUDICIAL REVIEW.—

4             (1) IN GENERAL.—Nothing in this section shall  
5       be construed to modify any statutory standard or re-  
6       quirement designed to protect human health, safety,  
7       or the environment.

8             (2) JUDICIAL REVIEW.—Compliance or non-  
9       compliance by an agency with the provisions of this  
10      section shall not be subject to judicial review.

11   SEC. 7. EFFECTIVE DATE.

12      Except as otherwise provided in this Act, this Act  
13   shall take effect 180 days after the date of the enactment  
14   of this Act, but shall not apply to any agency rule for  
15   which a general notice of proposed rulemaking is published  
16   on or before such date.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
Washington, D.C. 20503-0001

LRM NO: 3699

FILE NO: 1910

3/7/96

## LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 20

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES

(for) Assistant Director for Legislative Reference

OMB CONTACT: M. Jill GIBBONS 395-7593 Legislative Assistant's line (for simple responses): 395-3454  
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=GIBBONS, G=MARGARET, I=J  
gibbons\_m@atl.eop.gov

SUBJECT: Proposed Statement of Administration Policy RE: S942, Small Business  
Regulatory Fairness Act of 1995

DEADLINE: 9:00am Friday, March 08, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: Attached is an advance draft SAP on S. 942, as ordered reported from the Senate Small Business Committee yesterday. The text of the bill as ordered reported is also attached. Senate floor action may occur as early as tomorrow, March 8th. The text of the Manager's Amendment (referred to in the SAP) is not available at this time. We understand, however, that the Manager's Amendment addresses some of the concerns expressed by the Administration. We will circulate the text of the Manager's Amendment as soon as we receive it. *If a modification to the SAP is necessary to address unexpected developments concerning the Manager's Amendment, we will attempt to recirculate the revised SAP -- probably with a very short deadline.*

**LEGISLATIVE REFERRAL MEMORANDUM**  
Distribution List

LRM NO: 3699

FILE NO: 1916

**SUBJECT:** Proposed Statement of Administration Policy RE: S942, Small Business  
Regulatory Fairness Act of 1995**AGENCIES:**

7-AGRICULTURE - Marvin Shapiro - 2027201516  
25-COMMERCE - Michael A. Levitt - 2024823151  
19-Council on Environmental Quality - Elisabeth Blaug - 2023955750  
29-DEFENSE - Samuel T. Brick, Jr. - 7036971305  
30-EDUCATION - Jack Kristy - 2024018313  
32-ENERGY - Bob Rabben - 2025866718  
33-Environmental Protection Agency - Chris Hoff - 2022605414  
51-General Services Administration - William R. Ratchford - 2025010563  
52-HHS - Sondra S. Wallace - 2026907760  
54-HUD - Edward J. Murphy, Jr. - 2027081793  
59-INTERIOR - Jane Lyder - 2022086706  
61-JUSTICE - Andrew Fols - 2025142141  
62-LABOR - Robert A. Shapiro - 2022198201  
82-Nuclear Regulatory Commission - Trip Rothschild - 3014151611  
107-Small Business Administration - Mary Kristine Swedin - 2022056700  
110-Social Security Administration - Judy Chesser - 2024827148  
114-STATE - Julia C. Norton - 2026474463  
117-TRANSPORTATION - Tom Herlihy - 2023664687  
118-TREASURY - Richard S. Carro - 2026221146  
129-VETERANS AFFAIRS - Robert Coy - 2022736666  
76-National Economic Council - Sonyla Matthews - 2024562174

**EOP:**

Mike Fitzpatrick  
Jeff Hill  
Steve Aitken  
Ed Brigham  
Ed Rea  
Art Stigile  
Paul Weinstein  
Tracey Thornton  
Elena Kagan  
Jim Murr  
OMB/LA  
Rick Mertens  
Alan Rhinesmith  
Ken Schwartz  
Barry White  
Barry Clendenin  
Bruce Long  
Ron Cogswell  
Kathy Peroff  
Mat Blum  
Bob Damus

**RESPONSE TO  
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 3699  
FILE NO: 1916**

If your response to this request for views is simple (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.  
If the response is simple and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

**TO: M. Jill GIBBONS 395-7593  
Office of Management and Budget  
Fax Number: 395-3109  
Branch-Wide Line (to reach legislative assistant): 395-3454**

**FROM:** \_\_\_\_\_ (Date)  
 \_\_\_\_\_ (Name)  
 \_\_\_\_\_ (Agency)  
 \_\_\_\_\_ (Telephone)

**SUBJECT: Proposed Statement of Administration Policy RE: S942, Small Business  
Regulatory Fairness Act of 1995**

The following is the response of our agency to your request for views on the above-captioned subject:

- \_\_\_\_\_ Concur
- \_\_\_\_\_ No Objection
- \_\_\_\_\_ No Comment
- \_\_\_\_\_ See proposed edits on pages \_\_\_\_\_
- \_\_\_\_\_ Other: \_\_\_\_\_
- \_\_\_\_\_ FAX RETURN of \_\_\_\_\_ pages, attached to this response sheet

**DRAFT**

March 7, 1996  
(Senate)

S. 942 - Small Business Regulatory Enforcement Fairness  
Act of 1996  
(Bond (R) MO and 11 cosponsors)

The Administration supports judicial review of agencies' regulatory flexibility analyses and other provisions of S. 942 that strengthen the ability of small business to be meaningful participants in the regulatory system. Several concerns raised by the Administration have been resolved in the Manager's Amendment. With the changes made by the Manager's Amendment, the Administration supports Senate passage of S. 942. The Administration remains concerned, however, with provisions of S. 942 that would create new duplicative government bureaucracies, impose additional cost on taxpayers, and lead to increased litigation. The Administration looks forward to working with the Congress to address its remaining concerns with the bill.

The Manager's Amendment to S. 942 also includes a revised version of the Nickles/Reid Congressional review bill, S. 219, which the Senate passed last year. Because the Administration is committed to strengthening Legislative branch accountability for regulations, the Administration supports a 45-day period for the Congress to review rules before they take effect. However, given the passage of time since S. 219 was passed, applying this Congressional review process retroactively to November 20, 1994, should be reconsidered.

\* \* \* \* \*

*(As approved by Small Bus. Cte. 3/6/96)*

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: to provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES—104th Cong., 2d Sess.**

**S. 942**

To amend the Small Business Act to provide for the designation of an enforcement ombudsman and regional oversight board to monitor the enforcement activities of Federal agencies with respect to small business concerns, to provide for increased understanding of Federal regulations by small entities, to provide for judicial review of the Regulatory Flexibility Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. Bond

Viz:

1 Strike all after the enacting clause and insert the following:

2 **SEC. 1. SHORT TITLE.**

3 This Act may be cited as the "Small Business Regulatory Enforcement  
4 Fairness Act of 1996".

5 **SEC. 2. FINDINGS.**

6 Congress finds that--

7 (1) a vibrant and growing small business sector is critical to creating jobs in  
8 a dynamic economy;

9 (2) small businesses bear a disproportionate share of regulatory costs and  
10 burdens;

11 (3) fundamental changes that are needed in the regulatory and enforcement

1 culture of federal agencies to make agencies more responsive to small business  
2 can be made without compromising the statutory missions of the agencies;

3 (4) three of the top recommendations of the White House Conference on  
4 Small Business involve reforms to the way government regulations are  
5 developed and enforced, and reductions in government paperwork  
6 requirements;

7 (5) the requirements of the Regulatory Flexibility Act have too often been  
8 ignored by government agencies, resulting in greater regulatory burdens on  
9 small entities than necessitated by statute; and

10 (6) small entities should be given the opportunity to seek judicial review of  
11 agency actions required by the Regulatory Flexibility Act.

12 **SEC. 3. PURPOSES.**

13 The purposes of this act are--

14 (1) to implement certain recommendations of the 1995 White House  
15 Conference on Small Business regarding the development and enforcement  
16 of Federal regulations;

17 (2) to provide for judicial review of the Regulatory Flexibility Act;

18 (3) to encourage the effective participation of small businesses in the  
19 Federal regulatory process;

20 (4) to simplify the language of Federal regulations affecting small  
21 businesses;

22 (5) to develop more accessible sources of information on regulatory and  
23 reporting requirements for small businesses;

24 (6) to create a more cooperative regulatory environment among agencies  
25 and small businesses that is less punitive and more solution-oriented; and

26 (7) to make Federal regulators more accountable for their enforcement  
27 actions by providing small entities with a meaningful opportunity for redress  
28 of excessive enforcement activities.

1 **SEC. 4. EFFECTIVE DATE.**

2 This Act shall become effective on the date 90 days after enactment.

3 **TITLE I--REGULATORY COMPLIANCE**

4 **SIMPLIFICATION**

5 **SEC. 101. DEFINITIONS.**

6 For purposes of this Act--

7 (1) the terms "rule" and "small entity" have same meanings as in section  
8 601 of title 5, United States Code; and

9 (2) the term "agency" has the same meaning as in section 551 of title 5,  
10 United States Code.

11 (3) the term "small entity compliance guide" means a document  
12 designated as such by an agency.

13 **SEC. 102. COMPLIANCE GUIDES.**

14 (a) **COMPLIANCE GUIDE.**--For each rule or group of related rules for which  
15 an agency is required to prepare a final regulatory flexibility analysis under  
16 section 604 of title 5, United States Code, the agency shall publish one or more  
17 guides to assist small entities in complying with the rule, and shall designate  
18 such publications as "small entity compliance guides". The guides shall explain  
19 the actions a small entity is required to take to comply with a rule or group of  
20 rules. The agency shall, in its sole discretion, ensure that the guide is written  
21 using sufficiently plain language to be understood by affected small entities.

22 Agencies may prepare separate guides covering groups or classes of similarly  
23 affected small entities, and may cooperate with associations of small entities to  
24 develop and distribute such guides.

25 (b) **SINGLE SOURCE OF INFORMATION.**--Agencies shall cooperate to make  
26 available to small entities through a single source of information, the small entity  
27 compliance guides and all other available information on statutory and regulatory

1 requirements affecting small entities.

2 (c) LIMITATION ON JUDICIAL REVIEW.—Except as provided by this subsection,  
3 an agency's designation of a small entity compliance guide shall not be subject  
4 to judicial review. In any civil or administrative action against a small entity  
5 for a violation occurring after the effective date of this section, the content of  
6 the small business guide may be considered as evidence of the reasonableness or  
7 appropriateness of any proposed fines, penalties or damages.

8 **SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.**

9 (a) GENERAL.—Whenever appropriate in the interest of administering statutes  
10 and regulations within the jurisdiction of an agency, it shall be the practice of  
11 the agency to answer inquiries by small entities concerning information on and  
12 advice about compliance with such statutes and regulations, interpreting and  
13 applying the law to specific sets of facts supplied by the small entity. In any  
14 civil or administrative action against a small entity, guidance provided by an  
15 agency to a small entity may be considered as evidence of the reasonableness or  
16 appropriateness of any proposed fines, penalties or damages imposed on such  
17 small entity.

18 (b) PROGRAM.—Each agency shall establish a program for issuing guidance  
19 in response to such inquiries no later than 1 year after enactment of this section,  
20 utilizing existing functions and personnel of the agency to the extent practicable.

21 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT**  
22 **CENTERS.**

23 Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is  
24 amended—

25 (1) in subparagraph (O), by striking "and" at the end;

26 (2) in subparagraph (P), by striking the period at the end and inserting a  
27 semicolon; and

28 (3) by inserting after subparagraph (P) the following new subparagraphs:

1     “(Q) providing assistance to small business concerns regarding regulatory  
2 requirements, including providing training with respect to cost-effective  
3 regulatory compliance;

4     “(R) developing informational publications, establishing resource centers of  
5 reference materials, and distributing compliance guides published under section  
6 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to  
7 small business concerns; and

8     “(S) developing programs to provide confidential onsite assessments and  
9 recommendations regarding regulatory compliance to small business concerns  
10 and assisting small business concerns in analyzing the business development  
11 issues associated with regulatory implementation and compliance measures.”.

12     **TITLE II--REGULATORY ENFORCEMENT**

13     **REFORMS**

14     **SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT**

15     **OMBUDSMAN.**

16     The Small Business Act (15 U.S.C. 631 et seq.) is amended--

17         (1) by redesignating section 30 as section 31; and

18         (2) by inserting after section 29 the following new section:

19     **“SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.**

20         “(a) DEFINITIONS.--For purposes of this section, the term--

21             “(1) “Board” means a Regional Small Business Regulatory Fairness  
22 Board established under subsection (c); and

23             “(2) “Ombudsman” means the Small Business and Agriculture Regulatory  
24 Enforcement Ombudsman designated under subsection (b).

25         “(b) SBA ENFORCEMENT OMBUDSMAN.--

26             “(1) Not later than 180 days after the date of enactment of this section,  
27 the Administration shall designate a Small Business and Agriculture

1 Regulatory Enforcement Ombudsman utilizing existing personnel to the  
2 extent practicable. Other agencies shall assist the Ombudsman and take  
3 actions as necessary to ensure compliance with the requirements of this  
4 section. Nothing in this section is intended to replace or diminish the  
5 activities of any Ombudsman or similar office in any other agency.

6 "(2) The Ombudsman shall--

7 (A) work with each agency with regulatory authority over small  
8 businesses to ensure that small business concerns that receive or are  
9 subject to an audit, on-site inspection, compliance assistance effort, or  
10 other enforcement related communication or contact by agency personnel  
11 are provided with a confidential means to comment on and rate the  
12 performance of such personnel;

13 "(B) establish means to solicit and receive comments from small  
14 business concerns regarding actions by agency employees conducting  
15 compliance or enforcement related activities with respect to the small  
16 business concern, and maintain the identity of the person and small  
17 business concern making such comments on a confidential basis; and

18 "(C) based on comments received from small business concerns and  
19 the Boards, annually report to Congress and affected agencies concerning  
20 the enforcement activities of agency personnel including a rating of the  
21 responsiveness to small business of the various regional and program  
22 offices and personnel of each agency; and

23 "(D) coordinate and report annually on the activities, findings and  
24 recommendations of the Boards to the Administration and to the heads of  
25 affected agencies.

26 "(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--

27 "(1) Not later than 180 days after the date of enactment of this section,  
28 the Administration shall establish a Small Business Regulatory Fairness

1 **Board in each regional office of the Small Business Administration.**

2 **"(2) Each Board established under paragraph (1) shall--**

3 **"(A) meet at least annually to advise the Ombudsman on matters of**  
4 **concern to small businesses relating to the enforcement activities of**  
5 **agencies;**

6 **"(B) report to the Ombudsman on instances of excessive enforcement**  
7 **actions of agencies against small business concerns including any findings**  
8 **or recommendations of the Board as to agency enforcement policy or**  
9 **practice; and**

10 **"(C) prior to publication, provide comment on the annual report of the**  
11 **Ombudsman prepared under subsection (b).**

12 **"(3) Each Board shall consist of five members appointed by the**  
13 **Administration, after receiving the recommendations of the chair and ranking**  
14 **minority member of the Small Business Committees of the House and**  
15 **Senate.**

16 **"(4) Members of the Board shall serve for terms of three years or less.**

17 **"(5) The Administration shall select a chair from among the members of**  
18 **the Board who shall serve for not more than 2 years as chair.**

19 **"(6) A majority of the members of the Board shall constitute a quorum**  
20 **for the conduct of business, but a lesser number may hold hearings.**

21 **"(d) POWERS OF THE BOARDS.**

22 **"(1) The Board may hold such hearings and collect such information as**  
23 **appropriate for carrying out this section.**

24 **"(2) The Board may use the United States mails in the same manner and**  
25 **under the same conditions as other departments and agencies of the Federal**  
26 **Government.**

27 **"(3) The Board may accept donations of services necessary to conduct its**  
28 **business.**

1           **"(4) Members of the Board shall serve without compensation, provided**  
2           **that, members of the Board shall be allowed travel expenses, including per**  
3           **diem in lieu of subsistence, at rates authorized for employees of agencies**  
4           **under subchapter I of chapter 57 of title 5, United States Code, while away**  
5           **from their homes or regular places of business in the performance of services**  
6           **for the Board."**

7           **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT**  
8           **ACTIONS.**

9           **(a) IN GENERAL.--Each agency regulating the activities of small entities shall**  
10           **establish a policy or program to provide for the reduction, and under appropriate**  
11           **circumstances for the waiver, of civil penalties for violations of a statutory or**  
12           **regulatory requirement by a small entity.**

13           **(b) CONDITIONS AND EXCEPTIONS.--Policies or programs established under**  
14           **this section may contain conditions or exceptions such as --**

15                   **(1) requiring the small entity to correct the violation within a reasonable**  
16                   **correction period;**

17                   **(2) limiting the applicability to violations discovered by the small entity**  
18                   **through participation in a compliance assistance or audit program operated or**  
19                   **supported by the agency or a state, or through a compliance audit resulting**  
20                   **in disclosure of the violation;**

21                   **(3) exempting small entities that have been subject to multiple**  
22                   **enforcement actions by the agency;**

23                   **(4) exempting violations involving willful or criminal conduct; and**

24                   **(5) exempting violations that pose serious health, safety or environmental**  
25                   **threats or risk of serious injury.**

26           **TITLE III--EQUAL ACCESS TO JUSTICE ACT**  
27           **AMENDMENTS**

1       **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

2       Section 504(b)(1) of title 5, United States Code, is amended --

3           (1) by striking "\$75" in subparagraph (A) and inserting "\$125";

4           (2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

5           (3) at the end of subparagraph (B), by striking ";" and inserting the  
6 following: ", or (iii) a small entity as defined in section 601;";

7           (4) by striking "; and" in subparagraph (D) and inserting ":"

8           (5) by adding at the end the following new subparagraphs:

9           "(F) "prevailing party" includes a small entity with respect to claims in  
10 an adversary adjudication brought by an agency (1) that the small entity has  
11 raised a successful defense to, or (2) with respect to which the decision of  
12 the adjudicative officer is substantially less than that sought by the agency in  
13 the adversary adjudication, provided that such small entity has not committed  
14 a willful violation of the law or otherwise acted in bad faith, and

15           "(G) in an adversary adjudication brought by an agency against a small  
16 entity, in the determination whether the position of the agency, including any  
17 citation, assessment, fine, penalty or demand for settlement sought by the  
18 agency, is "substantially justified" only if the agency demonstrates that such  
19 position does not substantially exceed the decision of the adjudicative officer  
20 in the adversary adjudication, and the position of the agency is consistent  
21 with agency policy."

22       **SEC. 302. JUDICIAL PROCEEDINGS.**

23       Section 2412 of title 28, United States Code, is amended in paragraph

24 (d)(2)--

25           (1) by striking "\$75" in subparagraph (A) and inserting "\$125";

26           (2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

27           (3) by striking "; and" in subparagraph (G) and inserting ":"

28           (4) in subparagraph (H)--

1 (i) after "prevailing party," by inserting "includes a small entity  
2 with respect to a claims in a civil action brought by the United States (1)  
3 that the small entity has raised a successful defense to, or (2) with respect  
4 to which the final judgement in the action is substantially less than that  
5 sought by the United States, provided that such small entity has not  
6 committed a willful violation of the law or otherwise acted in bad faith,  
7 and"; and

8 (ii) at the end of the subparagraph, by striking the period and inserting  
9 "; and"; and

10 (5) by adding at the end the following new subparagraph:

11 "(1) in a civil action brought by the United States against a small  
12 entity, a position of the United States, including any citation, assessment,  
13 fine, penalty or demand for settlement sought by an agency, is  
14 "substantially justified" only if the United States demonstrates that such  
15 position does not substantially exceed the value of the final judgement in  
16 the action, and the position of the United States is consistent with agency  
17 policy."

## 18 TITLE IV--REGULATORY FLEXIBILITY ACT

### 19 AMENDMENTS

#### 20 SEC. 401. REGULATORY FLEXIBILITY ANALYSES.

21 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,  
22 United States Code, is amended--

23 (1) by inserting after "proposed rule", the phrase ", or publishes a notice  
24 of interpretive rule making of general applicability for any proposed  
25 interpretive rule"; and

26 (2) by inserting at the end of the subsection, the following new sentence:  
27 "In the case of interpretive rule making involving the internal revenue laws

1 of the United States, this section applies only to regulations as that term is used  
2 in section 7805 of the Internal Revenue Code of 1986 that impose a record  
3 keeping, reporting or paperwork requirement on small entities."

4 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5,  
5 United States Code, is amended --

6 (1) in subsection (a) to read as follows:

7 "(a) When an agency promulgates a final rule under section 553 of this title,  
8 after being required by that section or any other law to publish a general notice  
9 of proposed rulemaking, or otherwise publishing an initial regulatory flexibility  
10 analysis, the agency shall prepare a final regulatory flexibility analysis. Each  
11 final regulatory flexibility analysis shall contain--

12 "(1) a succinct statement of the need for, and objectives of, the rule;

13 "(2) a summary of the issues raised by the public comments in response to  
14 the initial regulatory flexibility analysis, a summary of the assessment of the  
15 agency of such issues, and a statement of any changes made in the proposed  
16 rule as a result of such comments;

17 "(3) a description of, and an estimate of the number of, small entities to  
18 which the rule will apply or an explanation of why no such estimate is  
19 available;

20 "(4) a description of the projected reporting, record keeping and other  
21 compliance requirements of the rule, including an estimate of the classes of  
22 small entities which will be subject to the requirement and the type of  
23 professional skills necessary for preparation of the report or record; and

24 "(5) a description of the steps the agency has taken to minimize the  
25 significant economic impact on small entities consistent with the stated  
26 objectives of applicable statutes, including a statement of the factual, policy, and  
27 legal reasons for selecting the alternative adopted in the final rule and why each  
28 one of the other significant alternatives to the rule considered by the agency was

1 rejected.”; and

2 (2) in subsection (b), by striking “at the time” and all that follows and  
3 inserting “such analysis or a summary thereof.”.

4 **SEC. 402. JUDICIAL REVIEW.**

5 Section 611 of title 5, United States Code, is amended to read as follows:

6 **“§611. Judicial Review**

7 **“(a)(1) For any rule subject to this chapter, a small entity that is adversely**  
8 **affected or aggrieved by agency action is entitled to judicial review of agency**  
9 **compliance with the requirements of this chapter, except the requirements of**  
10 **sections 602, 603, 609 and 612.**

11 **“(2) Each court having jurisdiction to review such rule for compliance with**  
12 **section 553 of this title or under any other provision of law shall have**  
13 **jurisdiction to review any claims of noncompliance with this chapter, except the**  
14 **requirements of sections 602, 603, 609 and 612.**

15 **“(3)(A) A small entity may seek such review during the period beginning on**  
16 **the date of final agency action and ending one year later, except that where a**  
17 **provision of law requires that an action challenging a final agency action be**  
18 **commenced before the expiration of such one year period, such lesser period**  
19 **shall apply to a petition for judicial review under this section.**

20 **“(B) In the case where an agency delays the issuance of a final regulatory**  
21 **flexibility analysis pursuant to section 608(b) of this chapter, a petition for**  
22 **judicial review under this section shall be filed not later than --**

23 **(i) one year after the date the analysis is made available to the public,**

24 **or**

25 **(ii) where a provision of law requires that an action challenging a**  
26 **final agency regulation be commenced before the expiration of the one**  
27 **year period, the number of days specified in such provision of law that is**  
28 **after the date the analysis is made available to the public.**

1       “(4) If the court determines, on the basis of the rulemaking record, that the  
2 agency action under this chapter was arbitrary, capricious, an abuse of discretion  
3 or otherwise not in accordance with the law, the court shall order the agency to  
4 take corrective action consistent with this chapter, which may include--

5           (A) remanding the rule to the agency, or

6           (B) deferring the enforcement of the rule against small entities, unless the  
7 court finds good cause for continuing the enforcement of the rule pending  
8 the completion of the corrective action.

9       “(5) Nothing in this subsection shall be construed to limit the authority of  
10 any court to stay the effective date of any rule or provision thereof under any  
11 other provision of law or to grant any other relief in addition to the  
12 requirements of this section.

13       “(b) In an action for the judicial review of a rule, the regulatory flexibility  
14 analysis for such rule, including an analysis prepared or corrected pursuant to  
15 paragraph (a)(4), shall constitute part of the entire record of agency action in  
16 connection with such review.

17       “(c) Except as otherwise required by this chapter, the court shall apply the  
18 same standards of judicial review that govern the review of agency findings  
19 under the statute granting the agency authority to conduct a rule making.

20       “(d) Compliance or noncompliance by an agency with the provisions of this  
21 chapter shall be subject to judicial review only in accordance with this section.

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

25       **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

26       (a) Section 605(b) of title 5, United States Code, is amended to read as  
27 follows:

28       “(b) Sections 603 and 604 of this title shall not apply to any proposed or

1 final rule if the head of the agency certifies that the rule will not, if  
2 promulgated, have a significant economic impact on a substantial number of  
3 small entities. If the head of the agency makes a certification under the  
4 preceding sentence, the agency shall publish such certification in the Federal  
5 Register, at the time of publication of general notice of proposed rule making  
6 for the rule or at the time of publication of the final rule, along with a statement  
7 providing the factual and legal reasons for such certification. The agency shall  
8 provide such certification and statement to the Chief Counsel for Advocacy of  
9 the Small Business Administration.”.

10 (b) Section 612 of title 5, United States Code is amended --

11 (1) in subsection (a), by striking “the committees on the Judiciary of the  
12 Senate and the House of Representatives, the Select Committee on Small  
13 Business of the Senate, and the Committee on Small Business of the House  
14 of Representatives” and inserting “the Committees on the Judiciary and  
15 Small Business of the Senate and House of Representatives”.

16 (2) in subsection (b), by striking “his views with respect to the” and  
17 inserting in lieu thereof, “his or her views with respect to compliance with  
18 this chapter, the adequacy of the rulemaking record and the”.

19 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

20 (a) **SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.--**

21 Section 609 of title 5, United States Code is amended --

22 (1) before “techniques,” by inserting “the reasonable use of”;

23 (2) in paragraph (4), after “entities”, by inserting “including soliciting and  
24 receiving comments over computer networks”;

25 (3) by designating the current text as subsection (a); and

26 (4) by adding the following new subsection:

27 “(b) Prior to publication of an initial regulatory flexibility analysis--

28 “(1) an agency shall notify the Chief Counsel for Advocacy of the Small

1 Business Administration and provide the Chief Counsel with information on  
2 the potential impacts of the proposed rule on small entities and the type of  
3 small entities that might be affected;

4 "(2) the Chief Counsel shall identify individuals representative of affected  
5 small entities for the purpose of obtaining advice and recommendations from  
6 those individuals about the potential impacts of the proposed rule;

7 "(3) the agency shall convene a review panel for such rule consisting  
8 wholly of full time federal employees of the office within the agency  
9 responsible for carrying out the proposed rule, the Office of Information and  
10 Regulatory Affairs within the Office of Management and Budget, and the  
11 Chief Counsel;

12 "(4) the panel shall review any material the agency has prepared in  
13 connection with this chapter, collect advice and recommendations of the  
14 small entity representatives identified by the agency after consultation with  
15 the Chief Counsel, on issues related to subsection 603(b), paragraphs (3), (4)  
16 and (5);

17 "(5) the review panel shall report on the comments of the small entity  
18 representatives and its findings as to issues related to subsection 603(b),  
19 paragraphs (3), (4) and (5), provided that such report shall be made public as  
20 part of the rulemaking record; and

21 "(6) where appropriate, the agency shall modify the proposed rule or the  
22 decision on whether an initial regulatory flexibility analysis is required.

23 "(c) Prior to publication of a final regulatory flexibility analysis--

24 "(1) an agency shall reconvene the review panel established under  
25 paragraph (b)(3), or if no initial regulatory flexibility analysis was published,  
26 undertake the actions described in paragraphs (b)(1) through (3);

27 "(2) the panel shall review any material the agency has prepared in  
28 connection with this chapter, collect the advice and recommendations of the

1 small entity representatives identified by the agency after consultation with  
2 the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4)  
3 and (5):

4 "(3) the review panel shall report on the comments of the small entity  
5 representatives and its findings as to issues related to subsection 604(a),  
6 paragraphs (3), (4) and (5), provided that such report shall be made public as  
7 part of the rulemaking record; and

8 "(4) where appropriate, the agency shall modify the final rule or the  
9 decision on whether a final regulatory flexibility analysis is required.

10 "(d) An agency may in its discretion apply subsections (b) and (c) to rules  
11 that the agency intends to certify under subsection 605(b), but the agency  
12 believes may have a greater than de minimis impact on a substantial number of  
13 small entities."

14 (b) **SMALL BUSINESS ADVOCACY CHAIRPERSONS.**--Not later than 30 days  
15 after the date of enactment of this Act, the head of each agency that has  
16 conducted a final regulatory flexibility analysis shall designate a small business  
17 advocacy chairperson using existing personnel to the extent possible, to be  
18 responsible for implementing this section and to act as permanent chair of the  
19 agency's review panels established pursuant to this section.

20

EXECUTIVE OFFICE OF THE PRESIDENT

March 6, 1996

TO: (See below)  
FROM: Michael Fitzpatrick, OIRA/ Wesley Warren, CEQ  
SUBJECT: Regulatory Reform

**FOR YOUR REVIEW AND COMMENTS**, attached is S. 942 (the Bond Bill) as reported today by unanimous voice vote (17-0) from the Senate Small Business Committee. It could come to the Senate floor as early as Thursday, but more likely on Friday or Monday. Please fax your comments to Mike (395-3047) as soon as possible.

**THERE WILL BE A REGULATORY REFORM CONFERENCE CALL TOMORROW, MARCH 7, 1996, AT 5:30 P.M.** To access the conference call, please dial 757-2104 code 0003.

Name	Phone	Fax	Office
Kevin Burke	690-7627	690-7380	HHS
Diane Thompson	301-443-3793	301-443-2567	FDA/HHS
John Dwyer	514-4969	514-0238	DOJ
Moñica Medina	514-0750	514-0557	DOJ
Richard Carro	622-0650	622-1188	Treas
Floyd Williams	622-0725	622-0534	Treas
Gary Guzy	260-7960	260-3684	EPA
Julie Anderson	260-5414	260-0516	EPA
Bob Wager	301-504-0515	301-504-0016	CPSC
Neil Eisner	366-4723	366-9313	DOT
Cresence Massei	366-9714	366-3675	DOT
Melanie Bellar	208-7693	208-5533	DOI
Larry Finfer	208-1786	208-4867	DOI
Mary Ann Richardson	219-6141	219-5120	DOL
Seth Harris	219-6197	219-9216	DOL
Ronald Matzner	205-6642	205-6846	SBA
Bob Nordhaus	586-5966	586-1499	DOE
Tom Gessel	565-7625	565-7873	VA
Eric Olsen	720-3808	720-5437	USDA
Mike Levitt	482-3151	482-0512	DOC
Nelson Diaz	708-2244	708-3389	HUD
Jamie Studley	401-6000	401-5391	Ed
Maryanne Kane	326-2450	326-2477	FTC
Kaye Williams	942-0014	942-9650	SEC
Ed Jurith	395-6709	395-6708	ONDCP
Kitty Higgins	456-2572	456-6704	WHOCA
Kris Balderston	456-7071	456-6704	WHOCA
Tracey Thornton	456-6493	456-2604	WHLA
Janet Murguia	456-6620	456-2604	WHLA
Martha Foley	456-6799	456-2271	WHO
Linda Lance	456-6222	456-6231	OVP
Jennifer Miller	456-9056	456-6212	OVP
Michael Waldman	456-2272	456-7431	DPC
Ron Melnick	456-6087	456-6025	OSTP
Marcia Seidner	456-6202	456-6025	OSTP
Ellen Seidman	456-2802	456-2223	NEC
Mike Toman	395-3997	395-6853	CEA
Ray Prince	395-5012	395-6853	CEA
Elena Kagan	456-7901	456-1647	WHC
Lisa Kountoupes	395-4790	395-3729	OMB/LA

AMENDMENT NO. \_\_\_\_\_

Calendar No. \_\_\_\_\_

Purpose: to provide for a complete substitute.

**IN THE SENATE OF THE UNITED STATES--104th Cong., 2d Sess.**

**S. 942**

To amend the Small Business Act to provide for the designation of an enforcement ombudsman and regional oversight board to monitor the enforcement activities of Federal agencies with respect to small business concerns, to provide for increased understanding of Federal regulations by small entities, to provide for judicial review of the Regulatory Flexibility Act, and for other purposes.

Referred to the Committee on \_\_\_\_\_  
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. Bond

Viz:

1 Strike all after the enacting clause and insert the following:

2 **SEC. 1. SHORT TITLE.**

3 This Act may be cited as the "Small Business Regulatory Enforcement  
4 Fairness Act of 1996".

5 **SEC. 2. FINDINGS.**

6 Congress finds that--

7 (1) a vibrant and growing small business sector is critical to creating jobs in  
8 a dynamic economy;

9 (2) small businesses bear a disproportionate share of regulatory costs and  
10 burdens;

11 (3) fundamental changes that are needed in the regulatory and enforcement

1 culture of federal agencies to make agencies more responsive to small business  
2 can be made without compromising the statutory missions of the agencies;

3 (4) three of the top recommendations of the White House Conference on  
4 Small Business involve reforms to the way government regulations are  
5 developed and enforced, and reductions in government paperwork  
6 requirements;

7 (5) the requirements of the Regulatory Flexibility Act have too often been  
8 ignored by government agencies, resulting in greater regulatory burdens on  
9 small entities than necessitated by statute; and

10 (6) small entities should be given the opportunity to seek judicial review of  
11 agency actions required by the Regulatory Flexibility Act.

12 **SEC. 3. PURPOSES.**

13 The purposes of this act are--

14 (1) to implement certain recommendations of the 1995 White House  
15 Conference on Small Business regarding the development and enforcement  
16 of Federal regulations;

17 (2) to provide for judicial review of the Regulatory Flexibility Act;

18 (3) to encourage the effective participation of small businesses in the  
19 Federal regulatory process;

20 (4) to simplify the language of Federal regulations affecting small  
21 businesses;

22 (5) to develop more accessible sources of information on regulatory and  
23 reporting requirements for small businesses;

24 (6) to create a more cooperative regulatory environment among agencies  
25 and small businesses that is less punitive and more solution-oriented; and

26 (7) to make Federal regulators more accountable for their enforcement  
27 actions by providing small entities with a meaningful opportunity for redress  
28 of excessive enforcement activities.

1     **SEC. 4. EFFECTIVE DATE.**

2         This Act shall become effective on the date 90 days after enactment.

3     **TITLE I--REGULATORY COMPLIANCE**

4     **SIMPLIFICATION**

5     **SEC. 101. DEFINITIONS.**

6         For purposes of this Act--

7             (1) the terms "rule" and "small entity" have same meanings as in section  
8             601 of title 5, United States Code; and

9             (2) the term "agency" has the same meaning as in section 551 of title 5,  
10            United States Code.

11            (3) the term "small entity compliance guide" means a document  
12            designated as such by an agency.

13     **SEC. 102. COMPLIANCE GUIDES.**

14         (a) **COMPLIANCE GUIDE.**--For each rule or group of related rules for which  
15         an agency is required to prepare a final regulatory flexibility analysis under  
16         section 604 of title 5, United States Code, the agency shall publish one or more  
17         guides to assist small entities in complying with the rule, and shall designate  
18         such publications as "small entity compliance guides". The guides shall explain  
19         the actions a small entity is required to take to comply with a rule or group of  
20         rules. The agency shall, in its sole discretion, ensure that the guide is written  
21         using sufficiently plain language to be understood by affected small entities.  
22         Agencies may prepare separate guides covering groups or classes of similarly  
23         affected small entities, and may cooperate with associations of small entities to  
24         develop and distribute such guides.

25         (b) **SINGLE SOURCE OF INFORMATION.**--Agencies shall cooperate to make  
26         available to small entities through a single source of information, the small entity  
27         compliance guides and all other available information on statutory and regulatory

1 requirements affecting small entities.

2 (c) LIMITATION ON JUDICIAL REVIEW.--Except as provided by this subsection,  
3 an agency's designation of a small entity compliance guide shall not be subject  
4 to judicial review. In any civil or administrative action against a small entity  
5 for a violation occurring after the effective date of this section, the content of  
6 the small business guide may be considered as evidence of the reasonableness or  
7 appropriateness of any proposed fines, penalties or damages.

8 **SEC. 103. INFORMAL SMALL ENTITY GUIDANCE.**

9 (a) GENERAL.--Whenever appropriate in the interest of administering statutes  
10 and regulations within the jurisdiction of an agency, it shall be the practice of  
11 the agency to answer inquiries by small entities concerning information on and  
12 advice about compliance with such statutes and regulations, interpreting and  
13 applying the law to specific sets of facts supplied by the small entity. In any  
14 civil or administrative action against a small entity, guidance provided by an  
15 agency to a small entity may be considered as evidence of the reasonableness or  
16 appropriateness of any proposed fines, penalties or damages imposed on such  
17 small entity.

18 (b) PROGRAM.--Each agency shall establish a program for issuing guidance  
19 in response to such inquiries no later than 1 year after enactment of this section,  
20 utilizing existing functions and personnel of the agency to the extent practicable.

21 **SEC. 104. SERVICES OF SMALL BUSINESS DEVELOPMENT**  
22 **CENTERS.**

23 Section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)) is  
24 amended--

25 (1) in subparagraph (O), by striking "and" at the end;

26 (2) in subparagraph (P), by striking the period at the end and inserting a  
27 semicolon; and

28 (3) by inserting after subparagraph (P) the following new subparagraphs:

1       “(Q) providing assistance to small business concerns regarding regulatory  
2 requirements, including providing training with respect to cost-effective  
3 regulatory compliance;

4       “(R) developing informational publications, establishing resource centers of  
5 reference materials, and distributing compliance guides published under section  
6 102(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 to  
7 small business concerns; and

8       “(S) developing programs to provide confidential onsite assessments and  
9 recommendations regarding regulatory compliance to small business concerns  
10 and assisting small business concerns in analyzing the business development  
11 issues associated with regulatory implementation and compliance measures.”.

## 12       **TITLE II--REGULATORY ENFORCEMENT**

### 13       **REFORMS**

#### 14       **SEC. 201. SMALL BUSINESS AND AGRICULTURE ENFORCEMENT** 15       **OMBUDSMAN.**

16       The Small Business Act (15 U.S.C. 631 et seq.) is amended--

17       (1) by redesignating section 30 as section 31; and

18       (2) by inserting after section 29 the following new section:

#### 19       **“SEC. 30. OVERSIGHT OF REGULATORY ENFORCEMENT.**

20       “(a) DEFINITIONS.--For purposes of this section, the term--

21       “(1) “Board” means a Regional Small Business Regulatory Fairness  
22 Board established under subsection (c); and

23       “(2) “Ombudsman” means the Small Business and Agriculture Regulatory  
24 Enforcement Ombudsman designated under subsection (b).

25       “(b) SBA ENFORCEMENT OMBUDSMAN.--

26       “(1) Not later than 180 days after the date of enactment of this section,  
27 the Administration shall designate a Small Business and Agriculture

1 Regulatory Enforcement Ombudsman utilizing existing personnel to the  
2 extent practicable. Other agencies shall assist the Ombudsman and take  
3 actions as necessary to ensure compliance with the requirements of this  
4 section. Nothing in this section is intended to replace or diminish the  
5 activities of any Ombudsman or similar office in any other agency.

6 “(2) The Ombudsman shall--

7 (A) work with each agency with regulatory authority over small  
8 businesses to ensure that small business concerns that receive or are  
9 subject to an audit, on-site inspection, compliance assistance effort, or  
10 other enforcement related communication or contact by agency personnel  
11 are provided with a confidential means to comment on and rate the  
12 performance of such personnel;

13 “(B) establish means to solicit and receive comments from small  
14 business concerns regarding actions by agency employees conducting  
15 compliance or enforcement related activities with respect to the small  
16 business concern, and maintain the identity of the person and small  
17 business concern making such comments on a confidential basis; and

18 “(C) based on comments received from small business concerns and  
19 the Boards, annually report to Congress and affected agencies concerning  
20 the enforcement activities of agency personnel including a rating of the  
21 responsiveness to small business of the various regional and program  
22 offices and personnel of each agency; and

23 “(D) coordinate and report annually on the activities, findings and  
24 recommendations of the Boards to the Administration and to the heads of  
25 affected agencies.

26 “(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.--

27 “(1) Not later than 180 days after the date of enactment of this section,  
28 the Administration shall establish a Small Business Regulatory Fairness

1 Board in each regional office of the Small Business Administration.

2 “(2) Each Board established under paragraph (1) shall--

3 “(A) meet at least annually to advise the Ombudsman on matters of  
4 concern to small businesses relating to the enforcement activities of  
5 agencies;

6 “(B) report to the Ombudsman on instances of excessive enforcement  
7 actions of agencies against small business concerns including any findings  
8 or recommendations of the Board as to agency enforcement policy or  
9 practice; and

10 “(C) prior to publication, provide comment on the annual report of the  
11 Ombudsman prepared under subsection (b).

12 “(3) Each Board shall consist of five members appointed by the  
13 Administration, after receiving the recommendations of the chair and ranking  
14 minority member of the Small Business Committees of the House and  
15 Senate.

16 “(4) Members of the Board shall serve for terms of three years or less.

17 “(5) The Administration shall select a chair from among the members of  
18 the Board who shall serve for not more than 2 years as chair.

19 “(6) A majority of the members of the Board shall constitute a quorum  
20 for the conduct of business, but a lesser number may hold hearings.

21 “(d) POWERS OF THE BOARDS.

22 “(1) The Board may hold such hearings and collect such information as  
23 appropriate for carrying out this section.

24 “(2) The Board may use the United States mails in the same manner and  
25 under the same conditions as other departments and agencies of the Federal  
26 Government.

27 “(3) The Board may accept donations of services necessary to conduct its  
28 business.

1           “(4) Members of the Board shall serve without compensation, provided  
2           that, members of the Board shall be allowed travel expenses, including per  
3           diem in lieu of subsistence, at rates authorized for employees of agencies  
4           under subchapter I of chapter 57 of title 5, United States Code, while away  
5           from their homes or regular places of business in the performance of services  
6           for the Board.”.

7           **SEC. 202. RIGHTS OF SMALL ENTITIES IN ENFORCEMENT**  
8           **ACTIONS.**

9           (a) IN GENERAL.--Each agency regulating the activities of small entities shall  
10          establish a policy or program to provide for the reduction, and under appropriate  
11          circumstances for the waiver, of civil penalties for violations of a statutory or  
12          regulatory requirement by a small entity.

13          (b) CONDITIONS AND EXCEPTIONS.--Policies or programs established under  
14          this section may contain conditions or exceptions such as --

15               (1) requiring the small entity to correct the violation within a reasonable  
16               correction period;

17               (2) limiting the applicability to violations discovered by the small entity  
18               through participation in a compliance assistance or audit program operated or  
19               supported by the agency or a state, or through a compliance audit resulting  
20               in disclosure of the violation;

21               (3) exempting small entities that have been subject to multiple  
22               enforcement actions by the agency;

23               (4) exempting violations involving willful or criminal conduct; and

24               (5) exempting violations that pose serious health, safety or environmental  
25               threats or risk of serious injury.

26           **TITLE III--EQUAL ACCESS TO JUSTICE ACT**  
27           **AMENDMENTS**

1     **SEC. 301. ADMINISTRATIVE PROCEEDINGS.**

2     Section 504(b)(1) of title 5, United States Code, is amended --

3         (1) by striking "\$75" in subparagraph (A) and inserting "\$125";

4         (2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

5         (3) at the end of subparagraph (B), by striking ";" and inserting the  
6 following: ", or (iii) a small entity as defined in section 601;";

7         (4) by striking "; and" in subparagraph (D) and inserting ";"

8         (5) by adding at the end the following new subparagraphs:

9             “(F) “prevailing party” includes a small entity with respect to claims in  
10 an adversary adjudication brought by an agency (1) that the small entity has  
11 raised a successful defense to, or (2) with respect to which the decision of  
12 the adjudicative officer is substantially less than that sought by the agency in  
13 the adversary adjudication, provided that such small entity has not committed  
14 a willful violation of the law or otherwise acted in bad faith, and

15             “(G) in an adversary adjudication brought by an agency against a small  
16 entity, in the determination whether the position of the agency, including any  
17 citation, assessment, fine, penalty or demand for settlement sought by the  
18 agency, is “substantially justified” only if the agency demonstrates that such  
19 position does not substantially exceed the decision of the adjudicative officer  
20 in the adversary adjudication, and the position of the agency is consistent  
21 with agency policy.”.

22     **SEC. 302. JUDICIAL PROCEEDINGS.**

23     Section 2412 of title 28, United States Code, is amended in paragraph

24 (d)(2)--

25         (1) by striking "\$75" in subparagraph (A) and inserting "\$125";

26         (2) by striking ", or (ii)" in subparagraph (B) and inserting ", (ii)";

27         (3) by striking "; and" in subparagraph (G) and inserting ";"

28         (4) in subparagraph (H)--

1 (i) after ““prevailing party”,” by inserting “includes a small entity  
2 with respect to a claims in a civil action brought by the United States (1)  
3 that the small entity has raised a successful defense to, or (2) with respect  
4 to which the final judgement in the action is substantially less than that  
5 sought by the United States, provided that such small entity has not  
6 committed a willful violation of the law or otherwise acted in bad faith,  
7 and”; and

8 (ii) at the end of the subparagraph, by striking the period and inserting  
9 “; and”; and

10 (5) by adding at the end the following new subparagraph:

11 “(I) in a civil action brought by the United States against a small  
12 entity, a position of the United States, including any citation, assessment,  
13 fine, penalty or demand for settlement sought by an agency, is  
14 “substantially justified” only if the United States demonstrates that such  
15 position does not substantially exceed the value of the final judgement in  
16 the action, and the position of the United States is consistent with agency  
17 policy.”.

## 18 **TITLE IV--REGULATORY FLEXIBILITY ACT**

### 19 **AMENDMENTS**

#### 20 **SEC. 401. REGULATORY FLEXIBILITY ANALYSES.**

21 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 603(a) of title 5,  
22 United States Code, is amended--

23 (1) by inserting after “proposed rule”, the phrase “, or publishes a notice  
24 of interpretive rule making of general applicability for any proposed  
25 interpretive rule”; and

26 (2) by inserting at the end of the subsection, the following new sentence:  
27 “In the case of interpretive rule making involving the internal revenue laws

1 of the United States, this section applies only to regulations as that term is used  
2 in section 7805 of the Internal Revenue Code of 1986 that impose a record  
3 keeping, reporting or paperwork requirement on small entities.”

4 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS. -- Section 604 of title 5,  
5 United States Code, is amended --

6 (1) in subsection (a) to read as follows:

7 “(a) When an agency promulgates a final rule under section 553 of this title,  
8 after being required by that section or any other law to publish a general notice  
9 of proposed rulemaking, or otherwise publishing an initial regulatory flexibility  
10 analysis, the agency shall prepare a final regulatory flexibility analysis. Each  
11 final regulatory flexibility analysis shall contain--

12 “(1) a succinct statement of the need for, and objectives of, the rule;

13 “(2) a summary of the issues raised by the public comments in response to  
14 the initial regulatory flexibility analysis, a summary of the assessment of the  
15 agency of such issues, and a statement of any changes made in the proposed  
16 rule as a result of such comments;

17 “(3) a description of, and an estimate of the number of, small entities to  
18 which the rule will apply or an explanation of why no such estimate is  
19 available;

20 “(4) a description of the projected reporting, record keeping and other  
21 compliance requirements of the rule, including an estimate of the classes of  
22 small entities which will be subject to the requirement and the type of  
23 professional skills necessary for preparation of the report or record; and

24 “(5) a description of the steps the agency has taken to minimize the  
25 significant economic impact on small entities consistent with the stated  
26 objectives of applicable statutes, including a statement of the factual, policy, and  
27 legal reasons for selecting the alternative adopted in the final rule and why each  
28 one of the other significant alternatives to the rule considered by the agency was

1 rejected.”; and

2 (2) in subsection (b), by striking “at the time” and all that follows and  
3 inserting “such analysis or a summary thereof.”

4 **SEC. 402. JUDICIAL REVIEW.**

5 Section 611 of title 5, United States Code, is amended to read as follows:

6 **“§611. Judicial Review**

7 “(a)(1) For any rule subject to this chapter, a small entity that is adversely  
8 affected or aggrieved by agency action is entitled to judicial review of agency  
9 compliance with the requirements of this chapter, except the requirements of  
10 sections 602, 603, 609 and 612.

11 “(2) Each court having jurisdiction to review such rule for compliance with  
12 section 553 of this title or under any other provision of law shall have  
13 jurisdiction to review any claims of noncompliance with this chapter, except the  
14 requirements of sections 602, 603, 609 and 612.

15 “(3)(A) A small entity may seek such review during the period beginning on  
16 the date of final agency action and ending one year later, except that where a  
17 provision of law requires that an action challenging a final agency action be  
18 commenced before the expiration of such one year period, such lesser period  
19 shall apply to a petition for judicial review under this section.

20 “(B) In the case where an agency delays the issuance of a final regulatory  
21 flexibility analysis pursuant to section 608(b) of this chapter, a petition for  
22 judicial review under this section shall be filed not later than --

23 (i) one year after the date the analysis is made available to the public,  
24 or

25 (ii) where a provision of law requires that an action challenging a  
26 final agency regulation be commenced before the expiration of the one  
27 year period, the number of days specified in such provision of law that is  
28 after the date the analysis is made available to the public.

1       “(4) If the court determines, on the basis of the rulemaking record, that the  
2 agency action under this chapter was arbitrary, capricious, an abuse of discretion  
3 or otherwise not in accordance with the law, the court shall order the agency to  
4 take corrective action consistent with this chapter, which may include--

5           (A) remanding the rule to the agency, or

6           (B) deferring the enforcement of the rule against small entities, unless the  
7 court finds good cause for continuing the enforcement of the rule pending  
8 the completion of the corrective action.

9       “(5) Nothing in this subsection shall be construed to limit the authority of  
10 any court to stay the effective date of any rule or provision thereof under any  
11 other provision of law or to grant any other relief in addition to the  
12 requirements of this section.

13       “(b) In an action for the judicial review of a rule, the regulatory flexibility  
14 analysis for such rule, including an analysis prepared or corrected pursuant to  
15 paragraph (a)(4), shall constitute part of the entire record of agency action in  
16 connection with such review.

17       “(c) Except as otherwise required by this chapter, the court shall apply the  
18 same standards of judicial review that govern the review of agency findings  
19 under the statute granting the agency authority to conduct a rule making.

20       “(d) Compliance or noncompliance by an agency with the provisions of this  
21 chapter shall be subject to judicial review only in accordance with this section.

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

#### 25 **SEC. 403. TECHNICAL AND CONFORMING AMENDMENTS.**

26       (a) Section 605(b) of title 5, United States Code, is amended to read as  
27 follows:

28       “(b) Sections 603 and 604 of this title shall not apply to any proposed or

1 final rule if the head of the agency certifies that the rule will not, if  
2 promulgated, have a significant economic impact on a substantial number of  
3 small entities. If the head of the agency makes a certification under the  
4 preceding sentence, the agency shall publish such certification in the Federal  
5 Register, at the time of publication of general notice of proposed rule making  
6 for the rule or at the time of publication of the final rule, along with a statement  
7 providing the factual and legal reasons for such certification. The agency shall  
8 provide such certification and statement to the Chief Counsel for Advocacy of  
9 the Small Business Administration.”.

10 (b) Section 612 of title 5, United States Code is amended --

11 (1) in subsection (a), by striking “the committees on the Judiciary of the  
12 Senate and the House of Representatives, the Select Committee on Small  
13 Business of the Senate, and the Committee on Small Business of the House  
14 of Representatives” and inserting “the Committees on the Judiciary and  
15 Small Business of the Senate and House of Representatives”.

16 (2) in subsection (b), by striking “his views with respect to the” and  
17 inserting in lieu thereof, “his or her views with respect to compliance with  
18 this chapter, the adequacy of the rulemaking record and the”.

19 **SEC. 404. SMALL BUSINESS ADVOCACY REVIEW PANELS:**

20 (a) **SMALL BUSINESS OUTREACH AND INTERAGENCY COORDINATION.--**

21 Section 609 of title 5, United States Code is amended --

22 (1) before “techniques,” by inserting “the reasonable use of”;

23 (2) in paragraph (4), after “entities”, by inserting “including soliciting and  
24 receiving comments over computer networks”;

25 (3) by designating the current text as subsection (a); and

26 (4) by adding the following new subsection:

27 “(b) Prior to publication of an initial regulatory flexibility analysis--

28 “(1) an agency shall notify the Chief Counsel for Advocacy of the Small

1 Business Administration and provide the Chief Counsel with information on  
2 the potential impacts of the proposed rule on small entities and the type of  
3 small entities that might be affected;

4 “(2) the Chief Counsel shall identify individuals representative of affected  
5 small entities for the purpose of obtaining advice and recommendations from  
6 those individuals about the potential impacts of the proposed rule;

7 “(3) the agency shall convene a review panel for such rule consisting  
8 wholly of full time federal employees of the office within the agency  
9 responsible for carrying out the proposed rule, the Office of Information and  
10 Regulatory Affairs within the Office of Management and Budget, and the  
11 Chief Counsel;

12 “(4) the panel shall review any material the agency has prepared in  
13 connection with this chapter, collect advice and recommendations of the  
14 small entity representatives identified by the agency after consultation with  
15 the Chief Counsel, on issues related to subsection 603(b), paragraphs (3), (4)  
16 and (5);

17 “(5) the review panel shall report on the comments of the small entity  
18 representatives and its findings as to issues related to subsection 603(b),  
19 paragraphs (3), (4) and (5), provided that such report shall be made public as  
20 part of the rulemaking record; and

21 “(6) where appropriate, the agency shall modify the proposed rule or the  
22 decision on whether an initial regulatory flexibility analysis is required.

23 “(c) Prior to publication of a final regulatory flexibility analysis--

24 “(1) an agency shall reconvene the review panel established under  
25 paragraph (b)(3), or if no initial regulatory flexibility analysis was published,  
26 undertake the actions described in paragraphs (b)(1) through (3);

27 “(2) the panel shall review any material the agency has prepared in  
28 connection with this chapter, collect the advice and recommendations of the

1 small entity representatives identified by the agency after consultation with  
2 the Chief Counsel, on issues related to subsection 604(a), paragraphs (3), (4)  
3 and (5);

4 “(3) the review panel shall report on the comments of the small entity  
5 representatives and its findings as to issues related to subsection 604(a),  
6 paragraphs (3), (4) and (5), provided that such report shall be made public as  
7 part of the rulemaking record; and

8 “(4) where appropriate, the agency shall modify the final rule or the  
9 decision on whether a final regulatory flexibility analysis is required.

10 “(d) An agency may in its discretion apply subsections (b) and (c) to rules  
11 that the agency intends to certify under subsection 605(b), but the agency  
12 believes may have a greater than de minimis impact on a substantial number of  
13 small entities.”

14 (b) SMALL BUSINESS ADVOCACY CHAIRPERSONS.--Not later than 30 days  
15 after the date of enactment of this Act, the head of each agency that has  
16 conducted a final regulatory flexibility analysis shall designate a small business  
17 advocacy chairperson using existing personnel to the extent possible, to be  
18 responsible for implementing this section and to act as permanent chair of the  
19 agency’s review panels established pursuant to this section.