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To require that before issuing an order, the President shall cite the authority for the order, conduct a cost benefit analysis, provide for public comment, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 26, 1999

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

A BILL

To require that before issuing an order, the President shall cite the authority for the order, conduct a cost benefit analysis, provide for public comment, and for other purposes.

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

3 **SECTION 1. REQUIREMENTS BEFORE THE PRESIDENT MAY**
4 **ISSUE AN ORDER.**

5 (a) DEFINITIONS.—In this Act, the term—

6 (1) “benefit” means the reasonably identifiable
7 significant favorable effects, quantifiable and non-
8 quantifiable, including social, health, safety, environ-

1 mental, economic, and distributional effects, that are
2 expected to result from implementation of, or com-
3 pliance with, an order;

4 (2) “cost” means the reasonably identifiable
5 significant adverse effects, quantifiable and non-
6 quantifiable, including social, health, safety, environ-
7 mental, economic, and distributional effects, that are
8 expected to result from implementation of, or com-
9 pliance with, an order;

10 (3) “cost benefit analysis” means an evaluation
11 of the costs and benefits of an order, quantified to
12 the extent feasible and appropriate and otherwise
13 qualitatively described, that is prepared at the level
14 of detail appropriate and practicable for reasoned
15 decisionmaking on the matter involved, taking into
16 consideration uncertainties, the significance and
17 complexity of the decision, and the need to ade-
18 quately inform the public; and

19 (4) “order” means any Executive order, procla-
20 mation, or other written directive that—

21 (A) is issued by the President; and

22 (B) subject to subsection (b)(1)—

23 (i) is not based solely on an authority
24 under article II of the United States Con-
25 stitution; and

1 (ii) is based on a statutory authority.

2 (b) AUTHORITY FOR ORDERS.—

3 (1) ORDERS.—Subsection (a)(4)(B) shall not
4 apply with respect to the term “order” as used in
5 this subsection.

6 (2) AUTHORITY.—The President may only issue
7 an order if such order is authorized under a provi-
8 sion of the United States Constitution or expressly
9 authorized by statute.

10 (c) REQUIREMENTS.—Subject to subsection (d), be-
11 fore issuing an order, the President shall—

12 (1) cite in the order all constitutional and stat-
13 utory provisions that authorize the order;

14 (2) conduct a cost benefit analysis of the order;

15 (3) publish the order and the cost benefit anal-
16 ysis of the order in the Federal Register; and

17 (4) provide for a period of no less than 30 days
18 after the publication under paragraph (3), for public
19 comment before the order takes effect.

20 (d) ORDERS WITH CLASSIFIED INFORMATION.—

21 (1) INAPPLICABILITY.—Subsection (c) (3) and
22 (4) shall not apply to an order that includes classi-
23 fied information.

24 (2) REQUIREMENT.—Before issuing an order
25 that includes classified information, the President

1 shall submit a copy of the order to the President pro
2 tempore of the Senate and the Speaker of the House
3 of Representatives no less than 30 days before the
4 order takes effect.

5 (e) EFFECT OF NONCOMPLIANCE.—Any order that
6 is not in compliance with this section shall have no force
7 and effect.

8 (f) APPLICATION TO PRIOR ORDERS.—An order in
9 effect before the effective date of this Act shall have no
10 force and effect on and after the date that occurs 1 year
11 after such effective date, unless the President reissues
12 such order in compliance with subsections (c) and (d).

13 (g) JUDICIAL REVIEW.—

14 (1) JURISDICTION OF DISTRICT COURTS.—The
15 district courts of the United States shall have juris-
16 diction of any civil action arising under this Act.

17 (2) STANDING.—The following persons may
18 bring a civil action in an appropriate district court
19 of the United States to challenge an order that is
20 not in compliance with this Act:

21 (A) CONGRESS AND MEMBERS OF CON-
22 GRESS.—The Senate, the House of Representa-
23 tives, any Senator, and any Representative to
24 the House of Representatives.

1 (B) STATE AND LOCAL GOVERNMENTS.—

2 The highest governmental official of any State,
3 commonwealth, district, territory, or possession
4 of the United States, or any political subdivi-
5 sion thereof, or the designee of such person.

6 (C) AGGRIEVED PERSONS.—Any person
7 aggrieved in a liberty or property interest ad-
8 versely affected directly by an order that is not
9 in compliance with this Act.

10 (3) APPEAL AND EXPEDITED REVIEW.—

11 (A) APPEAL TO SUPREME COURT.—An ap-
12 peal may be taken directly to the Supreme
13 Court of the United States from any interlocu-
14 tory or final judgment, decree, or order of a
15 district court in any civil action that the court
16 exercised jurisdiction under paragraph (1).

17 (B) EXPEDITED REVIEW.—The Supreme
18 Court shall, if it has not previously ruled on the
19 question, accept jurisdiction over the appeal re-
20 ferred to under subparagraph (A), advance the
21 appeal on the docket, and expedite the appeal
22 to the greatest extent possible.

23 (h) EFFECTIVE DATE.—This Act shall take effect 60
24 days after the date of enactment of this Act.

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