The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WARNER. I urge adoption of the amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

So the amendment (No. 1458) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1459

(Purpose: To make an amendment relating to surface transportation projects in the State of Hawaii)

Mr. BAUCUS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. INOUYE, for himself and Mr. AKAKA, proposes an amendment numbered 1459.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title I, insert the following:

SEC. 1___. REVISION OF AUTHORITY OF MULTIYEAR CONTRACTS.

Section 3035(ww) of the Intermodal Surface Transportation Efficiency Act of 1991 (Public Law 102–240; 105 Stat. 2136) is amended by adding at the end the following: ''Of the funds provided by this subsection, $100,000,000 is authorized to be appropriated for regionally significant ground transportation projects in the State of Hawaii.''.

Mr. BAUCUS. Mr. President, this is an amendment relating to surface transportation projects in the State of Hawaii. We have examined this amendment and agree to its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

So the amendment (No. 1459) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1460

Mr. BAUCUS. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Montana [Mr. BAUCUS], for Mr. JOHNSTON, for himself and Mr. BREAUX, proposes an amendment numbered 1460.

Mr. BAUCUS. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

Add new section as follows:

Notwithstanding any other provisions of law, section 1105(e)(2) of Public Law 102–240 is amended by adding at the end the following new sentence: ''A feasibility study may be conducted under this subsection to identify routes that will expedite future emergency evacuations of coastal areas of Louisiana.''

Mr. BAUCUS. Mr. President, this is a feasibility study which I think merits our consideration and approval. I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment?

Without objection, the amendment is agreed to.

So the amendment (No. 1460) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1461

(Purpose: To modify the authorization for a demonstration project in Minnesota)

Mr. WARNER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER], for Mr. Grams, for himself and Mr. WELLSTONE, proposes an amendment numbered 1461.

Mr. WARNER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place in title I, insert the following:

SEC. 1 . 34TH STREET CORRIDOR PROJECT IN MOORHEAD, MINNESOTA.

Section 149(a)(5)(A) of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100–17; 101 Stat. 181) is amended—

(1) in clause (i), by striking ''and'' at the end; and

(2) by inserting ''and (iii) a safety overpass,'' after ''interchange,''.

The PRESIDING OFFICER. Is there further debate?

Without objection, the amendment is agreed to.

So the amendment (No. 1461) was agreed to.

Mr. WARNER. Mr. President, I move to reconsider the vote.

Mr. BAUCUS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CHAFEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. CHAFEE. Mr. President, I now ask unanimous consent there be a period for morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

REGULATORY REFORM

Mr. DOLE. Mr. President, I have stated several times my intention to move as soon as possible to the regulatory reform bill. Regulatory reform is one of the most important issues this Congress will face, and the American people have made clear that they expect us to act. Regulatory reform does not have to be a partisan issue.

Democrats and Republicans alike have seen a need to inject common sense into how the Federal Government crafts regulations. Democrats and Republicans alike recognize that we cannot continue to bear $500 billion of added costs to the economy. That is why I believe it is important that we pass a strong regulatory reform bill, with bipartisan support.

Senator HEFLIN, for example, has provided welcome leadership in helping to craft this bill. I have been working with Senator JOHNSTON for some time to produce a strong regulatory reform package, in order to ensure that Congress answers America's call for relief.

I am pleased to say that I think Senator JOHNSTON and I have reached an agreement on at least a discussion draft, a package that we believe will enjoy broad support. My intention would be to, as soon as the draft is completed, ask that the draft be printed in the RECORD today so that everybody might have an opportunity to see it. Earlier this year, we had a dispute because not all Members had seen a draft on an earlier piece of legislation. Hopefully, by Tuesday of next week, we can bring that bill to the floor and try to complete it by the end of next week. We can put that into the RECORD today.

Again, this is a draft. We reached an agreement on this. It does not mean it may be the perfect answer or there may not be change between now and next Tuesday. I have talked to some of my colleagues on the other side, such as the Senator from Massachusetts, Senator KERRY, and many are wanting an opportunity to see what the draft is. By printing it in the RECORD, it will be available tomorrow, Friday, Saturday, Sunday and Monday and, hopefully, we can go to it on Tuesday.

I have suggested, and the Senator from Louisiana suggested, that we make that statement on the floor.

I yield to Senator JOHNSTON.

Mr. JOHNSTON. I thank the distinguished leader for his statement. He is correct that he and I have agreed upon a draft. It has been arrived at after extensive conversations, negotiations and

writing, and we have worked in over 100 amendments to the underlying text. I hope my colleagues like the result, and I have reason to suspect that they will.

I would like to emphasize and ask the majority leader, if he does not agree with this—that this is, in fact, a discussion draft, and that we invite input from all of our colleagues. By filing this to be printed, it is simply a matter of giving notice to colleagues of what is in the discussion draft. It is not the filing of the bill or the filing of an amendment. But it is a filing of notice, so that all of those who have meaningful input can work through the process and, hopefully, we will be able to improve the bill, so that by the time a bill or an amendment is filed, it will contain the suggestions of our colleagues, if we can agree upon those suggestions. Am I correct on that?

Mr. DOLE. Let me respond to that. The Senator is correct. I will underscore that this is a very significant effort. I do not want to downplay the importance of the draft, because it is important. It is a result of a lot of work on behalf of a lot of people on both sides of the aisle.

I do not want to suggest we are going to rewrite the whole thing. It is important. It has not been completed, and it could be improved, some would say by making it stronger, or there may be another way to improve it.

If there is no objection, I will ask unanimous consent later to have it printed. It is not completed yet. That will appear in the RECORD tomorrow morning and, hopefully, we can continue discussions tomorrow and Friday and again on Monday, so that on Tuesday we might be prepared to take the bill up with fairly broad bipartisan support.

Mr. JOHNSTON. Mr. President, I thank the leader for his statement. I thank him especially for the attitude of cooperation in the drafting of this ''discussion draft'' because the leader did not come in as a man with 56 votes in his pocket, the majority of votes, and do it his way; but rather, the input which I have had from this side of the aisle I tried to faithfully follow, and tried to compromise. Not everything went our way, and not everything went the Senator's way.

I really believe this is an excellent bill that I can enthusiastically support, and I hope my colleagues can improve, significantly, or in whatever ways they choose.

I think we have a draft that is going to attract some wide bipartisan support. I certainly hope so. From my part, I solicit and welcome any suggestions which I will faithfully try to negotiate to improve the bill, if any such suggestions are made.

Mr. DOLE. Again, I thank my colleague from Louisiana. He spent a lot more time on this this week than I. I know, for example, the many, many hours the Senator from Louisiana spent.

I also wanted to recognize the efforts of the Senator from Utah, Senator HATCH; the Senator from Delaware, Senator ROTH; the Senator from Alaska, Senator MURKOWSKI; the Senator from Oklahoma, Senator NICKLES; the Senator from Missouri, Senator BOND; the Senator from Alabama, Senator HEFLIN, whom I have already alluded to, and a number of others on this side, including the Senator from Georgia, Senator COVERDELL, who has been working in, I think, a very bipartisan way to try to find something we can agree on.

This is very important legislation. We hope we can have a bipartisan bill.

Mr. DASCHLE. Mr. President, Senator DOLE has laid out his plans having to do with the next piece of legislation, and I know a couple of our colleagues were hoping to comment on that.

Mr. DOLE. I am happy to yield to the Senator from Massachusetts.

Mr. KERRY. Mr. President, I would like to thank the majority leader and the Senator from Louisiana. I think this is a very positive and constructive step, to print the bill as a draft proposal rather than enter it as a piece of legislation at this point. I thank them for doing that.

I think the key here—as the majority leader has said, this is definitely one of the most sweeping and important pieces of legislation that we have yet considered—I think it is essential that we have an opportunity to try to guarantee that in the next few days, we come together as a working group to see if the product that will come to the floor as a bill, finally introduced, reflects the maximum amount of changes possible in the good spirit of bipartisan compromise.

I note for the majority leader that last year, we passed a cost-benefit definition by a vote of 0 to 8. I was pleased to vote for that. I think we ought to be able to, if we work in the next few days, to approach this bill with that same concept.

One of the fears that some Members have at this point is that there is enough layering of judicial involvement here that at a time when we are moving forward—securities reform, product liability reform, tort reform—we are suddenly perhaps creating a whole new avenue of tort possibilities.

I will simply ask the majority leader if, in the spirit of printing this, it is also his intention to now engage, in a couple of days, together with the Senator from Louisiana, with the Senator from Michigan, the Senator from Ohio, and others who are interested, in trying to see if we can pare down some of those differences that might help to truly make the final product introduced a bipartisan effort.

Mr. DOLE. Mr. President, I respond in the affirmative to the Senator from Massachusetts.

That is why I will ask consent later this evening, when we have the draft completed, so that we would have Thursday and Friday, and staff could have whatever time over the weekend and again on Monday, for the principals to see if we can come together.

We may not be able to come together. Maybe it will not happen next Tuesday. As I understand, a lot of people have been working on this in good faith, and all have not been in the same room but have been in different rooms in different groups.

That is based on the suggestion made by the Senator from Massachusetts earlier today. I think we agreed that we would not push it, we would not try to start on a bill tomorrow, but we would put it in the RECORD, a draft. It may not be the one that is introduced next week. The answer is yes.

Mr. KERRY. I think that is constructive. I thank the majority leader. He has certainly pledged to try to work in good faith to see if we can reach agreements.

Mr. GLENN. Mr. President, I want to add a couple of comments here. I think we have been at this on two tracks. There was a lot of regulatory reform legislation put in this year and considered in the Governmental Affairs Committee. We came out with a bill.

Another bill went through the Judiciary Committee process which is the one that the distinguished majority leader is referring to, that he and Senator JOHNSTON have been working on.

Now there has been a dual track going on. In addition to the Judiciary Committee bill, some have also been working on the bill that came out of the Governmental Affairs Committee, and it was voted unanimously out of Governmental Affairs with both Republican and Democratic support, a unanimous vote.

Now, we have taken that bill and done some work on it, and we think we have made some pretty good improvements.

It is ready. I will not submit it today, in view of what the majority leader has proposed here. But there have been two tracks. All of the work with regard to regulatory reform has not been centered on just the one bill that will be submitted today. I wanted to point that out to my colleagues.

I am happy to work with the Senator from Louisiana, as well as the majority leader, in trying to work this thing out and get the best of all of this legislation together if we possibly can do it. Whether that can be done in time enough to bring a completed form to the floor by next Tuesday, I do not know. But we can sure take a crack at it and see.

I just want to point out we do have this other effort. And the bill that we have been working on——

Mr. KERRY. Will the Senator yield for a moment?

Mr. GLENN. Just one more comment and I will yield the floor. We do have this other bill ready to go, in case we cannot negotiate these things out. I think it is a pretty good bill. We have given a lot of thought to it and have changed some of the things for which I know there was some objection.

With that I yield the floor.

Mr. JOHNSTON. Will the Senator yield? Will the Senator from Ohio yield?

Mr. JOHNSTON addressed the chair.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. Mr. President, in response to the Senator from Ohio I might say the excellent work he and Senator ROTH and the members of the Governmental Affairs Committee did was very much a matter of concern and negotiation to us on this bill. Particularly the judicial review, the recommendations which will appear in this draft are, really, motivated by the good work the Senator from Ohio and Senator ROTH did in their bill. So it is not that we considered only the Judiciary product.

To the contrary, the good work that went in the Roth-Glenn bill we sought to incorporate in this bill—I hope successfully. But to the extent it can be improved we solicit and invite those comments and suggestions.

Mr. LEVIN. Mr. President, will the Senator yield?

Mr. JOHNSTON. Yes, of course.

Mr. LEVIN. Let me just first commend the Senator from Louisiana and the majority leader for the process they are now undertaking. This is a process which submits a draft to the CONGRESSIONAL RECORD printer so we all can look at it and make suggestions to them for changes before it is introduced as a bill. I think that is the right process and holds out at least some hope that there could be a broad, bipartisan consensus behind the regulatory reform bill.

There is a broad, bipartisan consensus that we need regulatory reform. I think almost all of us have voted for it in one version or another. I have worked closely with my friend from Louisiana, as a matter of fact, over the years on some regulatory reform issues. But I think the fact they are going through this discussion draft stage first, before it is introduced as a bill, with the representation that they are open to suggestions from people on both sides of the aisle with points of view on that draft before they finally agree on a final bill, I think is an important step forward. Then, if that does not work out there will be, of course, time for alternatives then to be offered.

I thank my friend from Louisiana and the majority leader.

Mr. KERRY. Mr. President, just before we close off on the subject, it is my understanding from the conversations that we had privately on this, but I think I am not violating any of them to say that at this moment the expectancy is that whatever does come to the floor will be truly open to the full legislative process and not prejudged in a way we find with just a series of tabling motions and there is no legislative effort. Am I correct in that also?

Mr. JOHNSTON. The Senator is correct. But more than that, we solicit these comments in advance of filing the bill. That is an easier time and place to get this done.

Mr. KERRY. I could not agree with the Senator more.

Mr. JOHNSTON. Mr. President, I imagine there are going to be a lot of amendments. This is a huge and vitally important bill where each word carries tremendous meaning and where experts are going to look at it and be able to suggest improvements. For my part I think there are a lot of improvements that can be made. There are a lot of things I would like to change.

For example, we have a $50 million threshold for rules. I think it ought to be higher. That was a matter of compromise. And I hope we can discuss that seriously before we get to the floor or at least on the floor.

So the Senator is correct, it is open for serious negotiations before we file it, and after it is filed of course it is open for amendment. And I hope we will do it in a very bipartisan way and expect we will.

Mr. DOLE. Mr. President, I ask unanimous consent that the text of the draft be printed in the RECORD.

There being no objection, the draft was ordered to be printed in the RECORD, as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Comprehensive Regulatory Reform Act of 1995''.

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ''this subchapter'' and inserting ''this chapter and chapters 7 and 8'';

(2) in paragraph (13), by striking ''and'';

(3) in paragraph (14), by striking the period at the end and inserting ''; and''; and

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

''(15) 'Director' means the Director of the Office of Management and Budget.''.

SEC. 3. RULEMAKING.

Section 553 of title 5, United States Code, is amended to read as follows:

''§ 553. Rulemaking

''(a) APPLICABILITY.—This section applies to every rulemaking, according to the provisions thereof, except to the extent that there is involved—

''(1) a matter pertaining to a military or foreign affairs function of the United States;

''(2) a matter relating to the management or personnel practices of an agency;

''(3) an interpretive rule, general statement of policy, guidance, or rule of agency organization, procedure, or practice, unless such rule, statement, or guidance has general applicability and substantially alters or creates rights or obligations of persons outside the agency; or

''(4) a rule relating to the acquisition, management, or disposal by an agency of real or personal property, or of services, that is promulgated in compliance with applicable criteria and procedures.

''(b) NOTICE OF PROPOSED RULEMAKING.—General notice of proposed rulemaking shall be published in the Federal Register, unless all persons subject thereto are named and either personally served or otherwise have actual notice of the proposed rulemaking in accordance with law. Each notice of proposed rulemaking shall include—

''(1) a statement of the time, place, and nature of public rulemaking proceedings;

''(2) a succinct explanation of the need for and specific objectives of the proposed rule, including an explanation of the agency's determination of whether or not the rule is a major rule within the meaning of section 621(5);

''(3) a succinct explanation of the specific statutory basis for the proposed rule, including an explanation of—

''(A) whether the interpretation is clearly required by the text of the statute; or

''(B) if the interpretation is not clearly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and an explanation why the interpretation selected by the agency is the agency's preferred interpretation;

''(4) the terms or substance of the proposed rule;

''(5) a summary of any initial analysis of the proposed rule required to be prepared or issued pursuant to chapter 6;

''(6) a statement that the agency seeks proposals from the public and from State and local governments for alternative methods to accomplish the objectives of the rulemaking that are more effective or less burdensome than the approach used in the proposed rule; and

''(7) a statement specifying where the file of the rulemaking proceeding maintained pursuant to subsection (j) may be inspected and how copies of the items in the file may be obtained.

''(c) PERIOD FOR COMMENT.—The agency shall give interested persons not less than 60 days after providing the notice required by subsection (b) to participate in the rulemaking through the submission of written data, views, or arguments.

''(d) GOOD CAUSE EXCEPTION.—Unless notice or hearing is required by statute, a final rule may be adopted and may become effective without prior compliance with subsections (b) and (c) and (e) through (g) if the agency for good cause finds that providing notice and public procedure thereon before the rule becomes effective is impracticable, unnecessary, or contrary to the public interest. If a rule is adopted under this subsection, the agency shall publish the rule in the Federal Register with the finding and a succinct explanation of the reasons therefor.

''(e) PROCEDURAL FLEXIBILITY.—To collect relevant information, and to identify and elicit full and representative public comment on the significant issues of a particular rulemaking, the agency may use such other procedures as the agency determines are appropriate, including—

''(1) the publication of an advance notice of proposed rulemaking;

''(2) the provision of notice, in forms which are more direct than notice published in the Federal Register, to persons who would be substantially affected by the proposed rule but who are unlikely to receive notice of the proposed rulemaking through the Federal Register;

''(3) the provision of opportunities for oral presentation of data, views, information, or rebuttal arguments at informal public hearings, meetings, and round table discussions, which may be held in the District of Columbia and other locations;

''(4) the establishment of reasonable procedures to regulate the course of informal public hearings, meetings and round table discussions, including the designation of representatives to make oral presentations or engage in direct or cross-examination on behalf of several parties with a common interest in a rulemaking, and the provision of transcripts, summaries, or other records of

all such public hearings and summaries of meetings and round table discussions;

''(5) the provision of summaries, explanatory materials, or other technical information in response to public inquiries concerning the issues involved in the rulemaking; and

''(6) the adoption or modification of agency procedural rules to reduce the cost or complexity of the procedural rules.

''(f) PLANNED FINAL RULE.—If the provisions of a final rule that an agency plans to adopt are so different from the provisions of the original notice of proposed rulemaking that the original notice did not fairly apprise the public of the issues ultimately to be resolved in the rulemaking or of the substance of the rule, the agency shall publish in the Federal Register a notice of the final rule the agency plans to adopt, together with the information relevant to such rule that is required by the applicable provisions of this section and that has not previously been published in the Federal Register. The agency shall allow a reasonable period for comment on such planned final rule prior to its adoption.

''(g) STATEMENT OF BASIS AND PURPOSE.—An agency shall publish each final rule it adopts in the Federal Register, together with a concise statement of the basis and purpose of the rule and a statement of when the rule may become effective. The statement of basis and purpose shall include—

''(1) an explanation of the need for, objectives of, and specific statutory authority for, the rule;

''(2) a discussion of, and response to, any significant factual or legal issues presented by the rule, or raised by the comments on the proposed rule, including a description of the reasonable alternatives to the rule proposed by the agency and by interested persons, and the reasons why each such alternative was rejected;

''(3) a succinct explanation of whether the specific statutory basis for the rule is expressly required by the text of the statute, or if the specific statutory interpretation upon which the rule is based is not expressly required by the text of the statute, an explanation that the interpretation is within the range of permissible interpretations of the statute as identified by the agency, and why the agency has rejected other interpretations proposed in comments to the agency;

''(4) an explanation of how the factual conclusions upon which the rule is based are substantially supported in the rulemaking file; and

''(5) a summary of any final analysis of the rule required to be prepared or issued pursuant to chapter 6.

''(h) NONAPPLICABILITY.—In the case of a rule that is required by statute to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply in lieu of subsections (c), (e), (f), and (g).

''(i) EFFECTIVE DATE.—An agency shall publish the final rule in the Federal Register not later than 60 days before the effective date of such rule. An agency may make a rule effective in less than 60 days after publication in the Federal Register if the rule grants or recognizes an exemption, relieves a restriction, or if the agency for good cause finds that such a delay in the effective date would be contrary to the public interest and publishes such finding and an explanation of the reasons therefor, with the final rule.

''(j) RULEMAKING FILE.—(1) The agency shall maintain a file for each rulemaking proceeding conducted pursuant to this section and shall maintain a current index to such file.

''(2) Except as provided in subsection (k), the file shall be made available to the public not later than the date on which the agency makes an initial publication concerning the rule.

''(3) The rulemaking file shall include—

''(A) the notice of proposed rulemaking, any supplement to, or modification or revision of, such notice, and any advance notice of proposed rulemaking;

''(B) copies of all written comments received on the proposed rule;

''(C) a transcript, summary, or other record of any public hearing conducted on the rulemaking;

''(D) copies, or an identification of the place at which copies may be obtained, of factual and methodological material that pertains directly to the rulemaking and that was considered by the agency in connection with the rulemaking, or that was submitted to or prepared by or for the agency in connection with the rulemaking; and

''(E) any statement, description, analysis, or other material that the agency is required to prepare or issue in connection with the rulemaking, including any analysis prepared or issued pursuant to chapter 6.

The agency shall place each of the foregoing materials in the file as soon as practicable after each such material becomes available to the agency.

''(k) CONFIDENTIAL TREATMENT.—The file required by subsection (j) need not include any material described in section 552(b) if the agency includes in the file a statement that notes the existence of such material and the basis upon which the material is exempt from public disclosure under such section. The agency may not substantially rely on any such material in formulating a rule unless it makes the substance of such material available for adequate comment by interested persons. The agency may use summaries, aggregations of data, or other appropriate mechanisms to protect the confidentiality of such material to the maximum extent possible.

''(*l*) RULEMAKING PETITION.—(1) Each agency shall give an interested person the right to petition—

''(A) for the issuance, amendment, or repeal of a rule;

''(B) for the amendment or repeal of an interpretive rule or general statement of policy or guidance;

''(C) for an interpretation regarding the meaning of a rule, interpretive rule, general statement of policy, or guidance; and

''(D) for a variance or exemption from the terms of a rule to which the petitioner is otherwise subject, provided the statute authorizing the rule does not prohibit a variance or exemption.

''(2) The agency shall grant or deny a petition made pursuant to paragraph (1), and give written notice of its determination to the petitioner, with reasonable promptness, but in no event later than 18 months after the petition was received by the agency.

''(3) The written notice of the agency's determination shall include an explanation of the determination and a response to each significant factual and legal claim that forms the basis of the petition.

''(m) JUDICIAL REVIEW.—(1) The decision of an agency to use or not to use procedures in a rulemaking under subsection (e) shall not be subject to judicial review.

''(2) The rulemaking file required under subsection (j) shall constitute the rulemaking record for purposes of judicial review.

''(3) No court shall hold unlawful or set aside an agency rule based on a violation of subsection (j), unless the court finds that such violation has precluded fair public consideration of a material issue of the rulemaking taken as a whole.

''(4)(A) Judicial review of compliance or noncompliance with subsection (j) shall be limited to review of action or inaction on the part of an agency.

''(B) A decision by an agency to deny a petition under subsection (*l*) shall be subject to judicial review immediately upon denial, as final agency action under the statute granting the agency authority to carry out its action.

''(n) CONSTRUCTION.—(1) Notwithstanding any other provision of law, this section shall apply to and supplement the procedures governing informal rulemaking under statutes that are not generally subject to this section.

''(2) Nothing in this section authorizes the use of appropriated funds available to any agency to pay the attorney's fees or other expenses of persons intervening in agency proceedings.''.

SEC. 4. ANALYSIS OF AGENCY RULES.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''§ 621. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'benefit' means the reasonably identifiable significant favorable effects, including social, environmental, and economic effects, that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(3) the term 'cost' means the reasonably identifiable significant adverse effects, including social, environmental, and economic costs, that are expected to result directly or indirectly from implementation of a rule or other agency action;

''(4) the term 'cost-benefit analysis' means an evaluation of the costs and benefits of a rule, quantified to the extent feasible and appropriate and otherwise qualitatively described, that is prepared in accordance with the requirements of this subchapter at the level of detail appropriate and practicable for reasoned decisionmaking on the matter involved, taking into consideration the significance and complexity of the decision and any need for expedition;

''(5)(A) the term 'major rule' means—

''(i) a rule or set of closely related rules that the agency proposing the rule, the Director, or a designee of the President determines is likely to have a gross annual effect on the economy of $50,000,000 or more in reasonably quantifiable increased costs;

''(ii) a rule that is otherwise designated a major rule by the agency proposing the rule, the Director, or a designee of the President;

''(B) a designation or failure to designate under subparagraph (A)(ii) shall not be subject to judicial review; or

''(6) the term 'market-based mechanism' means a regulatory program that—

''(A) imposes legal accountability for the achievement of an explicit regulatory objective on each regulated person;

''(B) affords maximum flexibility to each regulated person in complying with mandatory regulatory objectives, which flexibility shall, where feasible and appropriate, include, but not be limited to, the opportunity to transfer to, or receive from, other persons, including for cash or other legal consideration, increments of compliance responsibility established by the program; and

''(C) permits regulated persons to respond to changes in general economic conditions and in economic circumstances directly pertinent to the regulatory program without affecting the achievement of the program's explicit regulatory mandates;

''(7) the term 'performance-based standards' means requirements, expressed in

terms of outcomes or goals rather than mandatory means of achieving outcomes or goals, that permit the regulated entity discretion to determine how best to meet specific requirements in particular circumstances;

''(8) the term 'reasonable alternatives' means the range of regulatory options that the agency has authority to consider under the statute granting rulemaking authority, including flexible regulatory options of the type described in section 622(c)(2)(C)(iii), unless precluded by the statute granting the rulemaking authority; and

''(9) the term 'rule' has the same meaning as in section 551(4), and—

''(A) includes any statement of general applicability that substantially alters or creates rights or obligations of persons outside the agency; and

''(B) does not include—

''(i) a rule that involves the internal revenue laws of the United States;

''(ii) a rule or agency action that authorizes the introduction into commerce, or recognizes the marketable status, of a product;

''(iii) a rule exempt from notice and public procedure under section 553(a);

''(iv) a rule or agency action relating to the public debt;

''(v) a rule required to be promulgated at least annually pursuant to statute, or that provides relief, in whole or in part, from a statutory prohibition, other than a rule promulgated pursuant to subtitle C of title II of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

''(vi) a rule of particular applicability that approves or prescribes the future rates, wages, prices, services, corporate or financial structures, reorganizations, mergers, acquisitions, accounting practices, or disclosures bearing on any of the foregoing;

''(vii) a rule relating to monetary policy or to the safety or soundness of federally insured depository institutions or any affiliate of such an institution (as defined in section 2(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(k))), credit unions, Federal Home Loan Banks, government sponsored housing enterprises, farm credit institutions, foreign banks that operate in the United States and their affiliates, branches, agencies, commercial lending companies, or representative offices, (as those terms are defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101));

''(viii) a rule relating to the payment system or the protection of deposit insurance funds or the farm credit insurance fund;

''(ix) any order issued in a rate or certificate proceeding by the Federal Energy Regulatory Commission, or a rule of general applicability that the Federal Energy Regulatory Commission certifies would increase reliance on competitive market forces or reduce regulatory burdens; or

''(x) a rule relating to the financial responsibility of brokers and dealers, the safeguarding of investor securities and funds, the clearance and settlement of securities transactions, or the suspension of trading that is promulgated under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.), or a rule relating to the protection of the Securities Investor Protection Corporation, that is promulgated under the Securities Investor Protection Act of 1970 (15 U.S.C. 78aaa et seq.).

''§ 622. Rulemaking cost-benefit analysis

''(a) DETERMINATION OF MAJOR RULE.—Prior to publishing a notice of proposed rulemaking for any rule (or, in the case of a notice of proposed rulemaking that has been published but not issued on or before the date of enactment of this subchapter, not later than 30 days after such date of enactment), each agency shall determine whether the rule is or is not a major rule within the meaning of section 621(5)(A)(i) and, if it is not, whether it should be designated as a major rule under section 621(5)(A)(ii).

''(b) DESIGNATION.—(1) If an agency has determined that a rule is not a major rule within the meaning of section 621(5)(A)(i) and has not designated the rule as a major rule within the meaning of section 621(5)(A)(ii), the Director or a designee of the President may, as appropriate, determine that the rule is a major rule or designate the rule as a major rule not later than 30 days after the publication of the notice of proposed rulemaking for the rule (or, in the case of a notice of proposed rulemaking that has been published on or before the date of enactment of this subchapter, not later than 1 year after such date of enactment).

''(2) Such determination or designation shall be published in the Federal Register, together with a succinct statement of the basis for the determination or designation.

''(c) INITIAL COST-BENEFIT ANALYSIS.—(1)(A) When the agency publishes a notice of proposed rulemaking for a major rule, the agency shall issue and place in the rulemaking file an initial cost-benefit analysis, and shall include a summary of such analysis in the notice of proposed rulemaking.

''(B)(i) When an agency, the Director, or a designee of the President has published a determination or designation that a rule is a major rule after the publication of the notice of proposed rulemaking for the rule, the agency shall promptly issue and place in the rulemaking file an initial cost-benefit analysis for the rule and shall publish in the Federal Register a summary of such analysis.

''(ii) Following the issuance of an initial cost-benefit analysis under clause (i), the agency shall give interested persons an opportunity to comment in the same manner as if the initial cost-benefit analysis had been issued with the notice of proposed rulemaking.

''(2) Each initial cost-benefit analysis shall contain—

''(A) a succinct analysis of the benefits of the proposed rule, including any beneficial effects that cannot be quantified, and an explanation of how the agency anticipates such benefits will be achieved by the proposed rule, including a description of the persons or classes of persons likely to receive such benefits;

''(B) a succinct analysis of the costs of the proposed rule, including any costs that cannot be quantified, and an explanation of how the agency anticipates such costs will result from the proposed rule, including a description of the persons or classes of persons likely to bear such costs;

''(C) a succinct description (including an analysis of the costs and benefits) of reasonable alternatives for achieving the identified benefits of the proposed rule, including, where such alternatives exist, alternatives that—

''(i) require no government action, where the agency has discretion under the statute granting the rulemaking authority not to promulgate a rule;

''(ii) will accommodate differences among geographic regions and among persons with differing levels of resources with which to comply;

''(iii) employ performance-based standards, market-based mechanisms, or other flexible regulatory options that permit the greatest flexibility in achieving the regulatory result that the statutory provision authorizing the rule is designed to produce; or

''(iv) employ voluntary standards;

''(D) in any case in which the proposed rule is based on one or more scientific evaluations, scientific information, or a risk assessment, or is subject to the risk assessment requirements of subchapter III, a description of the actions undertaken by the agency to verify the quality, reliability, and relevance of such scientific evaluation, scientific information, or risk assessment; and

''(E) an explanation of whether the proposed rule is likely to meet the decisional criteria of section 624.

''(d) FINAL COST-BENEFIT ANALYSIS.—(1) When the agency publishes a final major rule, the agency shall also issue and place in the rulemaking file a final cost-benefit analysis, and shall include a summary of the analysis in the statement of basis and purpose.

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

''(A) a description and comparison of the benefits and costs of the rule and of the reasonable alternatives to the rule described in the rulemaking record, including flexible regulatory options of the type described in subsection (c)(2)(C)(iii), and a description of the persons likely to receive such benefits and bear such costs; and

''(B) an analysis, based upon the rulemaking record considered as a whole, of whether and how the rule meets the decisional criteria in section 624.

''(3) In considering the benefits and costs, the agency, when appropriate, shall consider the benefits and costs incurred by all of the affected persons or classes of persons (including specially affected subgroups).

''(e) REQUIREMENTS FOR COST-BENEFIT ANALYSES.—(1)(A) The description of the benefits and costs of a proposed and a final rule required under this section shall include, to the extent feasible, a quantification or numerical estimate of the quantifiable benefits and costs. The analysis shall take into account only costs and benefits that are reasonably related to the effect that the statute under which the rulemaking is authorized is designed to produce.

''(B) The quantification or numerical estimate shall—

''(i) be made in the most appropriate unit of measurement, using comparable assumptions, including time periods;

''(ii) specify the ranges of predictions; and

''(iii) explain the margins of error involved in the quantification methods and the uncertainties and variabilities in the estimates used.

''(C) An agency shall describe the nature and extent of the nonquantifiable benefits and costs of a final rule pursuant to this section in as precise and succinct a manner as possible.

''(D) The agency evaluation of the relationship of benefits to costs shall be clearly articulated.

''(E) An agency shall not be required to make such evaluation primarily on a mathematical or numerical basis.

''(2) Where practicable and when understanding industry-by-industry effects is of central importance to a rulemaking, the description of the benefits and costs of a proposed and final rule required under this section shall describe such benefits and costs on an industry-by-industry basis.

''(f) HEALTH, SAFETY, OR EMERGENCY EXEMPTION FROM COST-BENEFIT ANALYSIS.—(1) A major rule may be adopted and may become effective without prior compliance with this subchapter if—

''(A) the agency for good cause finds that conducting cost-benefit analysis is impracticable due to an emergency or health or safety threat that is likely to result in significant harm to the public or natural resources; and

''(B) the agency publishes in the Federal Register, together with such finding, a succinct statement of the basis for the finding.

''(2) Not later than 180 days after the promulgation of a final major rule to which this

section applies, the agency shall comply with the provisions of this subchapter and, if thereafter necessary, revise the rule.

"§ 623. Agency Regulatory Review and Petitions

''(a) PRELIMINARY SCHEDULE FOR RULES.—Not later than 1 year after the date of enactment of this section, and every 5 years thereafter, each agency shall publish in the Federal Register a preliminary schedule of rules selected for review by the agency under this section, and request public comment thereon, including suggestions for additional rules warranting review. Such preliminary schedule shall propose deadlines for review of each rule listed thereon, and such deadlines shall occur not later than 11 years after the date of publication of the preliminary schedule.

''(b) INTERPRETIVE RULES, GENERAL STATEMENTS OF POLICY, AND GUIDANCE.—(1) For each interpretive rule, general statement of policy, or guidance, which on the date of enactment of this section has the force or effect of a rule under section 621(9), the agency shall, not later than the date of publication of the preliminary schedule in subsection (a)—

''(A) withdraw the rule;

''(B) issue a new interpretive rule, general statement of policy, or guidance;

''(C) publish notice in the Federal Register that the interpretive rule, general statement of policy, of guidance does not have the force or effect of a rule; or

''(D) include the rule on the schedule in subsection (a).

''(2) If such rule is included on the schedule in subsection (a), the rule may remain in force pending its review under this section, if the agency makes a finding of good cause and publishes such finding in the Federal Register with the schedule.

''(c) SCHEDULE.—(1) Not later than 1 year after publication of a preliminary schedule under subsection (a), the agency shall publish a schedule of rules to be reviewed by the agency under this section, taking into account the criteria in subsection (d), and comments from the public.

''(2) The agency shall publish revisions to the schedule as necessary to reflect changes to the schedule required by agency action pursuant to subsection (e) or (j)(4) or required to comply with any conditions of an annual appropriations Act affecting the agency.

''(3) The schedule, including any revisions of the schedule, shall establish a deadline for completion of the review of each rule listed thereon. Each such deadline shall occur not later than 10 years from the date of initial publication of the schedule.

''(d) CRITERIA FOR ESTABLISHING DEADLINES FOR REVIEW.—The schedules in subsections (a) and (c) shall establish priorities for the review of rules listed on the schedule, and the deadlines for review of each rule on the schedule, that take into account—

''(1) the extent to which, for a particular rule the preliminary views of the agency are that—

''(A) the rule is unnecessary, and the agency has discretion under the statute authorizing the rule to repeal the rule;

''(B) the rule would not meet the decisional criteria of section 624, and the agency has discretion under the statute authorizing the rule to repeal the rule; or

''(C) the rule could be revised in a manner allowed by the statute authorizing the rule to meet the decisional criteria under section 624 and to—

''(i) substantially decrease costs;

''(ii) substantially increase benefits; or

''(iii) provide greater flexibility for regulated entities, through mechanisms including those listed in section 622(c)(2)(C)(iii);

''(2) the resources expected to be available to the agency to carry out the reviews under this section; and

''(3) the importance of each rule relative to the other rules being reviewed under this section.

''(e) PETITION FOR RECONSIDERATION OF PRIORITY.—(1) Any interested person may petition the agency to revise the deadline for completion of review of a rule listed on a schedule under subsection (c). The petition shall identify with reasonable specificity the rule to be reviewed and the revised deadline requested. A decision to grant, or final agency action to deny, such petition shall be made with reasonable promptness, but in no event later than 18 months after the petition was received by the agency. If the petition is granted, the final schedule under subsection (c) shall be modified to reflect the revised deadline. The agency shall give notice of each petition submitted under this subsection and shall consider any comments submitted in granting or denying the petition.

''(2) Notwithstanding section 533(*l*)(2), during the time between a decision to grant or deny a petition and the publication of the next preliminary schedule under subsection (a), no further petition under this subsection on the same rule shall be required to be considered by the agency unless—

''(A) such further petition was filed not later than 90 days after public notice under this subsection; or

''(B) such further petition is based on a significant change in fact, circumstance, or provision of law underlying or otherwise related to the rule and occurring since the petition was granted or denied, that warrants the review of the deadline.

''(f) REVIEW OF RULE.—(1) For each rule on the schedule under subsection (c), the agency shall—

''(A) not later than 2 years before the deadline in such schedule, publish in the Federal Register a notice that solicits public comment regarding whether the rule should be extended, modified, or terminated;

''(B) not later than 1 year before the deadline in such schedule, publish in the Federal Register a notice that—

''(i) addresses public comments generated by the notice in subparagraph (A);

''(ii) contains a preliminary analysis provided by agency of whether the rule satisfies the decisional criteria of section 624;

''(iii) contains a preliminary determination as to whether the rule should be extended, modified, or terminated; and

''(iv) solicits public comment on the preliminary determination for the rule; and

''(C) not later than 60 days before the deadline in such schedule, publish in the Federal Register a final notice on the rule that—

''(i) addresses public comments generated by the notice in subparagraph (B);

''(ii) contains a final determination of whether to extend, modify, or terminate the rule;

''(iii) if the agency determines to extend the rule, contains findings necessary to satisfy the decisional criteria of section 624; and

''(iv) if the agency determines to modify the rule, contains a notice of proposed rulemaking under section 553.

''(2) If the agency's final determination is to extend or terminate the rule, that determination shall take effect 60 days after the publication in the Federal Register of the notice in paragraph (1)(c).

''(3) The head of an agency may extend the period for completing review of a rule for up to 2 years after the deadline in the schedule, if the head of the agency—

''(A) makes a finding of good cause for making the extension;

''(B) makes a finding that the extension is in the public interest; and

''(C) publishes such findings in the Federal Register with a notice of the extension.

''(g) DEADLINE FOR FINAL AGENCY ACTION ON MODIFIED RULE.—If an agency makes a determination to modify a rule under subsection (f)(1)(C)(ii), the agency shall complete final agency action with regard to such rule not later than 2 years after the date of publication of the notice in subsection (f)(1)(C) containing such determination. Nothing in this subsection shall limit the discretion of an agency to decide, after having proposed to modify a rule, not to promulgate such modification. Such decision shall constitute final agency action for the purposes of judicial review.

''(h) TERMINATION OF RULES.—(1) Subject to paragraph (2), if the head of an agency has not completed the review of a rule by the deadline established in the schedule published under subsection (c), the head of the agency shall not enforce the rule, and the rule shall terminate by operation of law, as of such deadline.

''(2) If a notice of extension has been published under subsection (f), the head of an agency shall not enforce a rule subject to such notice, and the rule shall terminate by operation of law, as of the earlier of—

''(A) the date that is 2 years after the deadline in the schedule; or

''(B) the date designated in the notice.

''(i) APPROPRIATIONS.—(1) The President's annual budget proposal submitted under section 1105(a) of title 31 for each agency subject to this section shall—

''(A) identify as a separate sum, the amount requested to be appropriated for implementation of this section during the upcoming fiscal year;

''(B) include a copy of the schedule under subsection (c); and

''(C) include a list of rules that may terminate during the year for which the budget proposal is made.

''(2) Amendments to the schedule under subsection (c) may be included in annual appropriations Acts for the relevant agencies. Each agency shall modify its schedule under subsection (c) to reflect such amendments.

''(j) PETITION TO AMEND OR REPEAL A MAJOR RULE.—(1) A petition under section 553(*l*)(1)(A) to amend or repeal a major rule shall be reviewed in accordance with this subsection. The petition shall identify with reasonable specificity the major rule to be reviewed and the amendment or repeal requested.

''(2) The agency shall grant the petition if the petition shows that—

''(A) there is a reasonable likelihood that, considering the future impact of the rule—

''(i) the rule is a major rule under section 621(5); and

''(ii) the head of the agency would not be able to make the findings required by section 624 with respect to the future impact of the rule; and

''(B) a schedule was published by the agency under subsection (c) at the time that the petition was received by the agency, and the rule was not scheduled for review on such schedule.

''(3) The agency shall give notice in the Federal Register on any petition under this subsection and shall consider any comments submitted in granting or denying the petition. Notwithstanding section 553(*l*)(2), during the 5-year period immediately following a decision to grant or deny a petition, no further petition of the same rule, reviewable under this subsection, shall be required to be considered by the agency, unless—

''(A) such further petition was filed not later than 90 days after notice was provided under this paragraph; or

''(B) such further petition is based on a significant change in a fact, circumstance, or

provision of law underlying or otherwise related to the rule and occurring since the petition was granted or denied, that warrants the amendment or repeal of the rule.

''(4) If the agency grants the petition reviewed under this subsection, or the petitioner is the prevailing party upon judicial review of the denial of a petition, the agency shall amend the schedule under subsection (c) to include the rule, and assign a deadline for completion of the review of the rule according to the criteria of subsection (d).

''(5) This subsection shall become effective, for each agency, on the date of publication of the first schedule for that agency under subsection (c).

''(k) PETITION TO REVIEW INTERPRETIVE RULES, GENERAL STATEMENTS OF POLICY, AND GUIDANCE.—(1) A petition under section 553(*l*)(1)(B) to review an interpretive rule, general statement of policy, or guidance on the basis that on the date the petition is filed, the interpretive rule, general statement of policy, or guidance has the force and effect of a rule under section 621(9) shall be reviewed in accordance with this subsection. The petition shall identify with reasonable specificity why the interpretive rule, general statement of policy, or guidance has the force and effect of a rule under section 621(9).

''(2) The agency shall grant the petition if the petition shows there is a reasonable likelihood that—

''(A) the interpretive rule, general statement of policy, or guidance has the force and effect of a rule under section 621(9) on the date the petition is filed; and

''(B) if a schedule has been published by the agency under subsection (c), at the time that the petition was received by the agency, the interpretive rule, general statement of policy, or guidance is not on such schedule.

''(3) For each interpretive rule, general statement of policy, or guidance for which a petition is granted under this subsection, the agency shall—

''(A) immediately withdraw the interpretive rule, general statement of policy, or guidance;

''(B) publish notice in the Federal Register that the interpretive rule, general statement of policy, or guidance does not have the force or effect of a rule; or

''(C) add the interpretive rule, general statement of policy, or guidance to the schedule under subsection (c), and assign a deadline for completion of the review of the rule according to the criteria in subsection (d).

''(4) If the agency adds the interpretive rule, general statement of policy, or guidance to the final schedule in subsection (c), it may continue to enforce the interpretive rule, general statement of policy, or guidance, if the agency makes a finding of good cause and publishes such finding in the Federal Register.

''(5) This subsection shall take effect, for each agency, on the date of publication by the agency of the first schedule for review under subsection (c).

''(*l*) PETITION FOR REVIEW OF A MAJOR RISK ASSESSMENT.—(1) Any interested person may petition an agency to conduct a scientific review of a risk assessment conducted or adopted by the agency.

''(2) The agency shall utilize external peer review, as appropriate, to evaluate the claims and analyses in the petition, and shall consider such review in making its determination of whether to grant the petition.

''(3) The agency shall grant the petition if the petition shows that there is a reasonable likelihood that—

''(A)(i) the risk assessment that is the subject of the petition was carried out in a manner substantially inconsistent with the principles in section 633; or

''(ii) the risk assessment that is the subject of the petition does not take into account material significant new scientific data and scientific understanding;

''(B) the risk assessment that is the subject of the petition contains different results than if it had been properly conducted pursuant to subchapter III; and

''(C) a revised risk assessment will provide the basis for reevaluating an agency determination of risk that would be likely to have an effect on the United States economy equivalent to that of major rule.

''(4) A decision to grant, or final action to deny, a petition under this subsection shall be made not later than 180 days after the petition is submitted.

''(5) If the agency grants the petition, it shall complete its review of the risk assessment not later than 1 year after its decision to grant the petition. If the agency revises the risk assessment, in response to its review, it shall subject the revised risk assessment to peer review under section 633(i) prior to its publication.

''(m) FINAL AGENCY ACTION.—(1) A failure to promulgate a modified rule, or to make other decisions required by subsection (g), by the date established under such subsection, shall constitute final agency action.

''(2) An agency's determination to extend or terminate a rule under this section shall be considered a final agency action.

''(3) An agency's action with respect to a petition filed under subsection (e) shall be overturned by the court on review only upon a determination by the court that such action was arbitrary and capricious or an abuse of discretion under section 706(a)(2)(A).

''(4) A decision to grant or deny a petition under subsection (l) shall be final agency action.

''§ 624. Decisional criteria

''(a) CONSTRUCTION WITH OTHER LAWS.—The requirements of this section shall supplement, and not supersede, any other decisional criteria otherwise provided by law.

''(b) REQUIREMENTS.—Except as provided in subsection (c), no final major rule subject to this subchapter shall be promulgated unless the agency head publishes in the Federal Register a finding that—

''(1) the benefits from the rule justify the costs of the rule;

''(2) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii); and

''(3)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest and the agency head provides an explanation of those considerations, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(4) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(c) ALTERNATIVE REQUIREMENTS.—If, applying the statutory requirements upon which the rule is based, a rule cannot satisfy the criteria of subsection (b), the agency head may promulgate the rule if the agency head finds that—

''(1) the rule employs to the extent practicable flexible reasonable alternatives of the type described in section 622(c)(2)(C)(iii);

''(2)(A) the rule adopts the least cost alternative of the reasonable alternatives that achieves the objectives of the statute; or

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment identified by the agency in the rulemaking record make a more costly alternative that achieves the objectives of the statute appropriate and in the public interest, and the agency head provides an explanation of those consideration, the rule adopts the least cost alternative of the reasonable alternatives necessary to take into account such uncertainties or benefits; and

''(3) if a risk assessment is required by section 632—

''(A) the rule is likely to significantly reduce the human health, safety, and environmental risks to be addressed;

''(B) if scientific, technical, or economic uncertainties or nonquantifiable benefits to health, safety, or the environment, preclude making the finding under subparagraph (A), promulgating the final rule is nevertheless justified for reasons stated in writing accompanying the rule and consistent with subchapter III.

''(d) PUBLICATION OF REASONS FOR NONCOMPLIANCE.—If an agency promulgates a rule to which subsection (c) applies, the agency head shall prepare a written explanation of why the agency was required to promulgate a rule that does not satisfy the criteria of subsection (b) and shall transmit the explanation with the final cost-benefit analysis to Congress when the final rule is promulgated.

''§ 625. Jurisdiction and judicial review

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

(b) JURISDICTION.—(1) Subject to paragraph (2), each court with jurisdiction under a statute to review final agency action to which this title applies has jurisdiction to review any claims of noncompliance with this subchapter and subchapter III.

(2) No claims of noncompliance with this subchapter or subchapter III shall be reviewed separate or apart from judicial review of the final agency action to which they relate.

(c) RECORD.—Any analysis or review required under this subchapter or subchapter III shall constitute part of the rulemaking record of the final agency action to which it pertains for purposes of judicial review.

(d) STANDARDS FOR REVIEW.—In any proceeding involving judicial review under section 706 or under the statute granting rulemaking authority, failure to comply with this subchapter or subchapter III may be considered by the court solely for the purpose of determining whether the final agency action is arbitrary and capricious or an abuse of discretion (or unsupported by substantial evidence where that standard is otherwise provided by law).

''§ 626. Deadlines for rulemaking

''(a) STATUTORY.—All deadlines in statutes that require agencies to propose or promulgate any rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(b) COURT-ORDERED.—All deadlines imposed by any court of the United States that would require an agency to propose or promulgate a rule subject to section 622 or subchapter III during the 5-year period beginning on the effective date of this section shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''(c) OBLIGATION TO REGULATE.—In any case in which the failure to promulgate a rule by a deadline occurring during the 5-year period beginning on the effective date of this section would create an obligation to regulate through individual adjudications, the deadline shall be suspended until the earlier of—

''(1) the date on which the requirements of section 622 or subchapter III are satisfied; or

''(2) the date occurring 2 years after the date of the applicable deadline.

''§ 627. Special rule

''Notwithstanding any other provision of the Comprehensive Regulatory Reform Act of 1995, or the amendments made by such Act, for purposes of this subchapter and subchapter IV, the head of each appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act), the National Credit Union Administration, the Federal Housing Finance Board, the Office of Federal Housing Enterprise Oversight, and the Farm Credit Administration, shall have authority with respect to such agency that otherwise would be provided under such subchapters to the Director, a designee of the President, Vice President, or any officer designated or delegated with authority under such subchapters.

''§ 628. Requirements for major environmental management activities

''(a) DEFINITION.—For purposes of this section, the term 'major environmental management activity' means—

''(1) a corrective action requirement under the Solid Waste Disposal Act;

''(2) a response action or damage assessment under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

''(3) the treatment, storage, or disposal of radioactive or mixed waste in connection with site restoration activity; and

''(4) Federal guidelines for the conduct of such activity, including site-specific guidelines,

the expected costs, expenses, and damages of which are likely to exceed, in the aggregate; $10,000,000.

''(b) APPLICABILITY.—A major environmental management activity is subject to this section unless construction or other remediation activity has commenced on a significant portion of the activity, and—

''(1) it is more cost-effective to complete the work than to apply the provisions of this section; or

''(2) the application of the provisions of this section, including any delays caused thereby, will result in a significant risk to human health or the environment.

''(c) REQUIREMENT TO PREPARE RISK ASSESSMENT.—(1) For each major environmental management activity or significant unit thereof that is proposed by the agency after the date of enactment of this subchapter, is pending on the date of enactment of this subchapter, or is subject to a granted petition for review pursuant to section 623, the head of an agency shall prepare—

''(A) a risk assessment in accordance with subchapter III; and

''(B) a cost-benefit analysis equivalent to that which would be required under this subchapter, if such subchapter were applicable.

''(2) In conducting a risk assessment or cost-benefit analysis under this section, the head of the agency shall incorporate the reasonably anticipated probable future use of the land and its surroundings (and any associated media and resources of either) affected by the environmental management activity.

''(3) For actions pending on the date of enactment of this section or proposed during the year following the date of enactment of this section, in lieu of preparing a risk assessment in accordance with subchapter III or cost-benefit analysis under this subchapter, an agency may use other appropriately developed analyses that allow it to make the judgments required under subsection (d).

''(d) REQUIREMENT.—The requirements of this subsection shall supplement, and not supercede, any other requirement provided by any law. A major environmental management activity under this section shall meet the decisional criteria under section 624 as if it is a major rule under such section

''SUBCHAPTER III—RISK ASSESSMENTS

''§ 631. Definitions

''For purposes of this subchapter—

''(1) except as otherwise provided, the definitions under section 551 shall apply to this subchapter;

''(2) the term 'exposure assessment' means the scientific determination of the intensity, frequency and duration of actual or potential exposures to the hazard in question;

''(3) the term 'hazard assessment' means the scientific determination of whether a hazard can cause an increased incidence of one or more significant adverse effects, and a scientific evaluation of the relationship between the degree of exposure to a perceived cause of an adverse effect and the incidence and severity of the effect;

''(4) the term 'major rule' has the meaning given such term in section 621(5);

''(5) the term 'risk assessment' means the systematic process of organizing and analyzing scientific knowledge and information on potential hazards, including as appropriate for the specific risk involved, hazard assessment, exposure assessment, and risk characterization;

''(6) the term 'risk characterization' means the integration and organization of hazard and exposure assessment to estimate the potential for specific harm to an exposed individual population or natural resource including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, and inferences and assumptions in the assessment;

''(7) the term 'screening analysis' means an analysis using simple conservative postulates to arrive at an estimate of upper and lower bounds as appropriate, that permits the manager to eliminate risks from further consideration and analysis, or to help establish priorities for agency action; and

''(8) the term 'substitution risk' means an increased risk to human health, safety, or the environment reasonably likely to result from a regulatory option.

''§ 632. Applicability

''(a) IN GENERAL.—(1) Except as provided in subsection (c), for each proposed and final major rule, a primary purpose of which is to protect human health, safety, or the environment, or a consequence of which is a substantial substitution risk, that is proposed by an agency after the date of enactment of this subchapter, or is pending on the date of enactment of this subchapter, the head of each agency shall prepare a risk assessment in accordance with this subchapter.

''(2) An agency shall not, as a condition for the issuance or modification of a permit, conduct, or require any person to conduct, a risk assessment not otherwise explicitly required by law or regulation.

''(b) APPLICATION OF PRINCIPLES.—Except as provided in subsection (c), the head of each agency shall apply the principles in this subchapter to any risk assessment carried out by, or on behalf of, or prepared by others and adopted by, the agency in connection with human health, safety, and environmental risks.

''(c) EXCEPTIONS.—(1) This subchapter shall not apply to risk assessments performed with respect to—

''(A) a situation for which the agency finds good cause that conducting a risk assessment is impracticable due to an emergency or health and safety threat that is likely to result in significant harm to the public or natural resources;

''(B) a rule or agency action that authorizes the introduction into commerce, or initiation of manufacture, of a substance, mixture, or product, or recognizes the marketable status of a product;

''(C) a human health, safety, or environmental inspection, an action enforcing a rule or permit, or an individual facility permitting action, except risk assessments conducted in connection with permits issued under subtitle C of title II of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

''(D) a screening analysis clearly identified as such; or

''(E) product registrations, reregistrations, tolerance settings, and reviews of premanufacture notices under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and the Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

''(2) An analysis shall not be treated as a screening analysis for the purposes of paragraph (1)(D) if the result of the analysis is used—

''(A) as the basis for imposing a restriction on a previously authorized substance, product, or activity after its initial introduction into manufacture or commerce; or

''(B) to characterize a finding of significant risk from a substance or activity in any agency document or other communication made available to the public, the media, or Congress.

''(3) This subchapter shall not apply to any food, drug, or other product label or labeling, or to any risk characterization appearing on any such label.

''§ 633. Principles for risk assessments

''(a) IN GENERAL.—(1) The head of each agency shall design and conduct risk assessments in a manner that promotes rational and informed risk management decisions and informed public input into the process of making agency decisions.

''(2) The head of each agency shall establish and maintain a distinction between risk assessment and risk management.

''(3) An agency may take into account priorities for managing risks, including the types of information that would be important in evaluating a full range of alternatives, in developing priorities for risk assessment activities.

''(4) In conducting a risk assessment, the head of each agency shall employ the level of detail and rigor appropriate and practicable for reasoned decisionmaking in the matter involved, proportionate to the significance and complexity of the potential agency action and the need for expedition.

''(5) An agency shall not be required to repeat discussions or explanations in each risk

assessment required under this subchapter if there is an unambiguous reference to a relevant discussion or explanation in another reasonably available agency document that was prepared in accordance with this section.

''(b) LEVEL OF DETAIL.—(1) Each agency shall develop and use an iterative process for risk assessment, starting with relatively inexpensive screening analyses and progressing to more rigorous analyses, as circumstances or results warrant.

''(2) In determining whether or not to proceed to a more detailed analysis, the head of the agency shall take into consideration whether or not use of additional data or the analysis thereof would significantly change the estimate of risk.

''(c) DATA QUALITY.—(1) The head of each agency shall base each risk assessment only on the best reasonably available scientific data and scientific understanding, including scientific information that finds or fails to find a correlation between a potential hazard and an adverse effect, and data regarding exposure and other relevant physical conditions that are reasonably expected to be encountered.

''(2) The agency shall select data for use in a risk assessment based on a reasoned analysis of the quality and relevance of the data, and shall describe such analysis.

''(3) In making its selection of data, the agency shall consider whether the data were developed in accordance with good laboratory practice or other appropriate protocols to ensure data quality, such as the standards for the development of test data promulgated pursuant to section 4 of the Toxic Substances Control Act (15 U.S.C. 2603), and the standards for data requirements promulgated pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a), or other form of independent valuation.

''(4) Subject to paragraph (3), relevant scientific data submitted by interested parties shall be reviewed and considered by the agency in the analysis under paragraph (2).

''(5) When conflicts among scientific data appear to exist, the risk assessment shall include a discussion of all relevant information including the likelihood of alternative interpretations of the data and emphasizing—

''(A) postulates that represent the most reasonable inferences from the supporting scientific data; and

''(B) when a risk assessment involves an extrapolation from toxicological studies, data with the greatest scientific basis of support for the resulting harm to affected individuals, populations, or resources.

''(6) The head of an agency shall not automatically incorporate or adopt any recommendation or classification made by any foreign government, the United Nations, any international governmental body or standards-making organization, concerning the health effects value of a substance. Nothing in this paragraph shall be construed to affect the implementation or application of any treaty or international trade agreement to which the United States is a party.

''(d) USE OF POSTULATES.—(1) To the maximum extent practicable, each agency shall use postulates, including default assumptions, inferences, models or safety factors, only when relevant scientific data and scientific understanding, including site-specific data, are lacking. The agency shall decrease the use of postulates to the extent higher quality scientific data and understanding become available.

''(2) When a risk assessment involves choice of a postulate, the head of the agency shall—

''(A) identify the postulate and its scientific or policy basis, including the extent to which the postulate has been validated, or conflicts with empirical data;

''(B) explain the basis for any choices among postulates; and

''(C) describe reasonable alternative postulates that were not selected by the agency for use in the risk assessment, and the sensitivity of the conclusions of the risk assessment to the alternatives, and the rationale for not using such alternatives.

''(3) An agency shall not inappropriately combine or compound multiple postulates.

''(4) The agency shall develop a procedure and publish guidelines for choosing default postulates and for deciding when and how in a specific risk assessment to adopt alternative postulates or to use available scientific information in place of a default postulate.

''(e) RISK CHARACTERIZATION.—In each risk assessment, the agency shall include in the risk characterization, as appropriate, each of the following:

''(1) A description of the hazard of concern.

''(2) A description of the populations or natural resources that are the subject of the risk assessment.

''(3) An explanation of the exposure scenarios used in the risk assessment, including an estimate of the corresponding population at risk and the likelihood of such exposure scenarios.

''(4) A description of the nature and severity of the harm that could plausibly occur.

''(5) A description of the major uncertainties in each component of the risk assessment and their influence on the results of the assessment.

''(f) PRESENTATION OF RISK ASSESSMENT CONCLUSIONS.—(1) To the extent feasible and scientifically appropriate, the head of an agency shall—

''(A) express the overall estimate of risk as a range or probability distribution that reflects variabilities, uncertainties and data gaps in the analysis;

''(B) provide the range and distribution of risks and the corresponding exposure scenarios, identifying the reasonably expected risk to the general population and, where appropriate, to more highly exposed subpopulations; and

''(C) where quantitative estimates of the range and distribution of risk estimates are not available, describe the qualitative factors influencing the range of possible risks.

''(2) When scientific data and understanding that permits relevant comparisons of risk are reasonably available, the agency shall use such information to place the nature and magnitude of risks to human health, safety, and the environment being analyzed in context.

''(3) When scientifically appropriate information on significant substitution risks to human health, safety, or the environment is reasonably available to the agency, or is contained in information provided to the agency by a commentator, the agency shall describe such risks in the risk assessments.

''(g) PEER REVIEW.—(1) Each agency shall provide for peer review in accordance with this section of any risk assessment subject to the requirements of this subchapter that forms that basis of any major rule or a major environmental management activity.

''(2) Each agency shall develop a systematic program for balanced, independent, and external peer review that—

''(A) shall provide for the creation or utilization of peer review panels, expert bodies, or other devices that are balanced and comprised of participants selected on the basis of their expertise relevant to the sciences involved in regulatory decisions and who are independent of the agency program that developed the risk assessment being reviewed;

''(B) shall not exclude any person with substantial and relevant expertise as a participant on the basis that such person has a potential interest in the outcome, if such interest is fully disclosed to the agency, unless the result of the review would have a direct and predictable effect on a substantial financial interest of such person;

''(C) shall provide for a timely completed peer review, meeting agency deadlines, that contains a balanced presentation of all considerations, including minority reports and agency response to all significant peer review comments; and

''(D) shall provide adequate protections for confidential business information and trade secrets, including requiring panel members to enter into confidentiality agreements.

''(3) Each peer review shall include a report to the Federal agency concerned detailing the scientific and technical merit of data and the methods used for the risk assessment or cost-benefit analysis, and shall identify significant peer review comments. Each agency shall provide a written response to all significant peer review comments. All peer review comments, conclusions, composition of the panels, and the agency's responses shall be made available to the public and shall be made part of the administrative record for purposes of judicial review of any final agency action.

''(4)(A) The Director of the Office of Science and Technology Policy shall develop a systematic program to oversee the use and quality of peer review of risk assessments.

''(B) The Director or the designee of the President may order an agency to conduct peer review for any risk assessment that is likely to have a significant impact on public policy decisions, or that would establish an important precedent.

''(5) The proceedings of peer review panels under this section shall not be subject to the Federal Advisory Committee Act.

''(h) PUBLIC PARTICIPATION.—The head of each agency shall provide appropriate opportunities for public participation and comment on risk assessments.

''§ 634. Rule of construction

''Nothing in this subchapter shall be construed to—

''(1) preclude the consideration of any data or the calculation of any estimate to more fully describe or analyze risk, scientific uncertainty, or variability; or

''(2) require the disclosure of any trade secret or other confidential information.

''§ 635. Comprehensive risk reduction

''(a) SETTING PRIORITIES.—The head of each agency with programs to protect human health, safety, or the environment shall set priorities for the use of resources available to address those risks to human health, safety, and the environment, with the goal of achieving the greatest overall net reduction in risks with the public and private sector resources expended.

''(b) INCORPORATING RISK-BASED PRIORITIES INTO BUDGET AND PLANNING.—The head of each agency in subsection (a) shall incorporate the priorities identified under subsection (a) into the agency budget, strategic planning, regulatory agenda, enforcement, and research activities. When submitting its budget request to Congress and when announcing its regulatory agenda in the Federal Register, each covered agency shall identify the risks that the covered agency head has determined are the most serious and can be addressed in a cost-effective manner using the priorities set under subsection (a), the basis for that determination, and explicitly identify how the agency's requested budget and regulatory agenda reflect those priorities.

''(c) REPORTS BY THE NATIONAL ACADEMY OF SCIENCES.—(1) Not later than 6 months after

the date of enactment of this section, the Director of the Office of Science and Technology Policy shall enter into an arrangement with the National Academy of Sciences to investigate and report on comparative risk analysis. The arrangement shall provide, to the extent deemed appropriate and feasible by the Academy, for—

''(A) 1 or more reports evaluating methods of comparative risk analysis that would be appropriate for agency programs related to human health, safety, and the environment to use in setting priorities for activities; and

''(B) a report providing a comprehensive and comparative analysis of the risks to human health, safety, and the environment that are addressed by agency programs under subsection (a), along with companion activities to disseminate the conclusions of the report to the public.

''(2) The report or reports prepared under paragraph (1)(A) shall be completed not later than 3 years after the date of enactment of this section. The report under paragraph (1)(B) shall be completed not later than 4 years after the date of enactment of this section, and shall draw, as appropriate, upon the insights and conclusions of the report or reports made under paragraph (1)(A). The companion activities under paragraph (1)(B) shall be completed not later than 5 years after the date of enactment of this section.

''(3)(A) The head of an agency with programs to protect human health, safety, and the environment shall incorporate the recommendations of reports under paragraph (1) in revising any priorities under subsection (a).

''(B) The head of the agency shall submit a report to the appropriate Congressional committees of jurisdiction responding to the recommendations from the National Academy of Sciences and describing plans for utilizing the results of comparative risk analysis in agency budget, strategic planning, regulatory agenda, enforcement, and research and development activities.

''(4) Following the submission of the report in paragraph (2), for the next 5 years, the head of the agency shall submit, with the budget request submitted to Congress under section 1105(a) of title 31, a description of how the requested budget of the agency and the strategic planning activities of the agency reflect priorities determined using the recommendations of reports issued under subsection (a). The head of the agency shall include in such description—

''(A) recommendations on the modification, repeal, or enactment of laws to reform, eliminate, or enhance programs or mandates relating to human health, safety, or the environment; and

''(B) recommendation on the modification or elimination of statutory or judicially mandated deadlines,

that would assist the head of the agency to set priorities in activities to address the risks to human health, safety, or the environment that incorporate the priorities developed using the recommendations of the reports under subsection (a), resulting in more cost-effective programs to address risk.

''(5) For each budget request submitted in accordance with paragraph (4), the Director shall submit an analysis of ways in which resources could be reallocated among Federal agencies to achieve the greatest overall net reduction in risk.

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

''§ 641. Procedures

''(a) IN GENERAL.—The Director or a designee of the President shall—

''(1) establish and, as appropriate, revise procedures for agency compliance with this chapter; and

''(2) monitor, review, and ensure agency implementation of such procedures.

''(b) PUBLIC COMMENT.—Procedures established pursuant to subsection (a) shall only be implemented after opportunity for public comment. Any such procedures shall be consistent with the prompt completion of rulemaking proceedings.

''(c) TIME FOR REVIEW.—(1) If procedures established pursuant to subsection (a) include review of any initial or final analyses of a rule required under chapter 6, the time for any such review of any initial analysis shall not exceed 90 days following the receipt of the analysis by the Director, or a designee of the President.

''(2) The time for review of any final analysis required under chapter 6 shall not exceed 90 days following the receipt of the analysis by the Director, a designee of the President.

''(3)(A) The times for each such review may be extended for good cause by the President or by an officer to whom the President has delegated his authority pursuant to section 642 for an additional 30 days. At the request of the head of an agency, the President or such an officer may grant an additional extension of 30 days.

''(B) Notice of any such extension, together with a succinct statement of the reasons therefor, shall be inserted in the rulemaking file.

''§ 642. Delegation of authority

''(a) IN GENERAL.—The President may delegate the authority granted by this subchapter to an officer within the Executive Office of the President whose appointment has been subject to the advice and consent of the Senate.

''(b) NOTICE.—Notice of any delegation, or any revocation or modification thereof shall be published in the Federal Register.

''§ 643. Judicial review

''The exercise of the authority granted under this subchapter by the Director, the President, or by an officer to whom such authority has been delegated under section 642 and agency compliance or noncompliance with the procedure under section 641 shall not be subject to judicial review.

''§ 644. Regulatory agenda

''The head of each agency shall provide, as part of the semiannual regulatory agenda published under section 602—

''(1) a list of risk assessments under preparation or planned by the agency;

''(2) a brief summary of relevant issues addressed or to be addressed by each listed risk assessment;

''(3) an approximate schedule for completing each listed risk assessment;

''(4) an identification of potential rules, guidance, or other agency actions supported or affected by each listed risk assessment; and

''(5) the name, address, and telephone number of an agency official knowledgeable about each listed risk assessment.''.

(b) REGULATORY FLEXIBILITY ANALYSIS.—

(1) FINAL REGULATORY FLEXIBILITY ANALYSIS.—Section 604 of title 5, United States Code, is amended by adding at the end thereof the following new subsection:

''(c)(1) No final rule for which a final regulatory flexibility analysis is required under this section shall be promulgated unless the agency finds that the final rule minimizes significant economic impact on small entities to the maximum extent possible, consistent with the purposes of this subchapter, the objectives of the rule, and the requirements of applicable statutes.

''(2) If an agency determines that a statute requires a rule to be promulgated that does not satisfy the criterion of paragraph (1), the agency shall—

''(A) include a written explanation of such determination in the final regulatory flexibility analysis; and

''(B) transmit the final regulatory flexibility analysis to Congress when the final rule is promulgated.''.

(2) JUDICIAL REVIEW.—Section 611 of title 5, United States Code, is amended to read as follows:

''§ 611. Judicial review

''(a)(1) For any rule described in section 603(a), and with respect to which the agency—

''(A) certified, pursuant to section 605(b), that such rule would not have a significant economic impact on a substantial number of small entities;

''(B) prepared a final regulatory flexibility analysis pursuant to section 604; or

''(C) did not prepare an initial regulatory flexibility analysis pursuant to section 603 or a final regulatory flexibility analysis pursuant to section 604 except as permitted by sections 605 and 608,

an affected small entity may petition for the judicial review of such certification, analysis, or failure to prepare such analysis, in accordance with this subsection. A court having jurisdiction to review such rule for compliance with section 553 or under any other provision of law shall have jurisdiction over such petition.

''(2)(A) Notwithstanding any other provision of law, an affected small entity shall have 1 year after the effective date of the final rule to challenge the certification, analysis or failure to prepare an analysis required by this subchapter with respect to any such rule.

''(B) If an agency delays the issuance of a final regulatory flexibility analysis pursuant to section 608(b), a petition for judicial review under this subsection may be filed not later than 1 year after the date the analysis is made available to the public.

''(3) For purposes of this subsection, the term 'affected small entity' means a small entity that is or will be subject to the provisions of, or otherwise required to comply with, the final rule.

''(4) Nothing in this subsection shall be construed to limit the authority of any court to stay the effective date of any rule or provision thereof under any other provision of law.

''(5)(A) Notwithstanding section 605, if the court determines, on the basis of the court's review of the rulemaking record, that there is substantial evidence that the rule would have a significant economic impact on a substantial number of small entities, the court shall order the agency to prepare a final regulatory flexibility analysis that satisfies the requirements of section 604.

''(B) If the agency prepared a final regulatory flexibility analysis, the court shall order the agency to take corrective action consistent with section 604 if the court determines, on the basis of the court's review of the rulemaking record, that the final regulatory flexibility analysis does not satisfy the requirements of section 604.

''(6) The court shall stay the rule and grant such other relief as the court determines to be appropriate if, by the end of the 90-day period beginning on the date of the order of the court pursuant to paragraph (5), the agency fails, as appropriate—

''(A) to prepare the analysis required by section 604; or

''(B) to take corrective action consistent with section 604.

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

''(c) Except as otherwise required by the provisions of this subchapter, the court shall apply the same standards of judicial review that govern the review of agency findings under the statute granting the agency authority to conduct the rulemaking.''.

(c) REVISION OF CERTAIN PROVISIONS OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT RELATING TO TESTING.—In applying section 409(c)(3)(A), 512(d)(1), or 721(b)(5)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(3)(A), 360b(d)(1), 379e(b)(5)(B)), the Secretary of Health and Human Services and the Administrator of the Environmental Protection Agency shall not prohibit or refuse to approve a substance or product on the basis of safety, where the substance or product presents a negligible or insignificant foreseeable risk to human health resulting from its intended use.

(d) TOXIC RELEASE INVENTORY.—

(1) Within 180 days after the date of the enactment of this subsection, the Administrator of the Environmental Protection Agency shall carry out a review of each characterization or listing of a substance added since November 8, 1994 to the Toxic Release Inventory under section 313(c) of the Emergency Planning and Community Right to Know Act of 1986.

(2) In this review the Administrator shall determine with the respect to each such characterization or listing whether removal of the substance from the Toxic Release Inventory presents a foreseeable significant risk to human health or the environment.

(3) The Administrator shall remove from the Toxic Release Inventory any substance whose removal is justified by the determination under paragraph (2).

(4) (A) Within 90 days after the date of the enactment of this subsection the Administrator shall publish in the Federal Register a draft review and the Administrator's preliminary plans to use the authority under paragraph (3), and afford interested persons an opportunity to comment.

(B) Promptly upon completion of the review, the Administrator shall provide Congress with a written report summarizing the review and the reasons for action or inaction on each characterization or listing subject to this, subsection.

(e) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) CHAPTER ANALYSIS.—Part I of title 5, United States Code, is amended by striking the chapter heading and table of sections for chapter 6 and inserting the following:

''CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

''SUBCHAPTER I—REGULATORY ANALYSIS

''SUBCHAPTER II—ANALYSIS OF AGENCY RULES

''SUBCHAPTER III—RISK ASSESSMENTS

''SUBCHAPTER IV—EXECUTIVE OVERSIGHT

(2) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting immediately before section 601, the following subchapter heading:

''SUBCHAPTER I—REGULATORY ANALYSIS''.

SEC. 5. JUDICIAL REVIEW.

(a) IN GENERAL.—Chapter 7 of title 5, United States Code, is amended—

(1) by striking section 706; and

(2) by adding at the end the following new sections:

''§ 706. Scope of review

''(a) To the extent necessary to reach a decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

''(1) compel agency action unlawfully withheld or unreasonably delayed; and

''(2) hold unlawful and set aside agency action, findings and conclusions found to be—

''(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

''(B) contrary to constitutional right, power, privilege, or immunity;

''(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

''(D) without observance of procedure required by law;

''(E) unsupported by substantial evidence in a proceeding subject to sections 556 and 557 or otherwise reviewed on the record of an agency hearing provided by statute;

''(F) without substantial support in the rulemaking file, viewed as a whole, for the asserted or necessary factual basis, in the case of a rule adopted in a proceeding subject to section 553; or

''(G) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

''(b) In making the determinations set forth in subsection (a), the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

''§ 707. Consent decrees

''In interpreting any consent decree in effect on or after the date of enactment of this section that imposes on an agency an obligation to initiate, continue, or complete rulemaking proceedings, the court shall not enforce the decree in a way that divests the agency of discretion clearly granted to the agency by statute to respond to changing circumstances, make policy or managerial choices, or protect the rights of third parties.

''§ 708. Affirmative defense

''Notwithstanding any other provision of law, it shall be an affirmative defense in any enforcement action brought by an agency that the regulated person or entity reasonably relied on and is complying with a rule, regulation, adjudication, directive, or order of such agency or any other agency that is incompatible, contradictory, or otherwise cannot be reconciled with the agency rule, regulation, adjudication, directive, or order being enforced.

(b) TECHNICAL AMENDMENT.—The analysis for chapter 7 of title 5, United States Code, is amended by striking the item relating to section 706 and inserting the following new items:

SEC. 6. CONGRESSIONAL REVIEW.

(a) FINDING.—The Congress finds that effective steps for improving the efficiency and proper management of Government operations will be promoted if a moratorium on the implementation of certain significant final rules is imposed in order to provide Congress an opportunity for review.

(b) IN GENERAL.—Title 5, United States Code, is amended by inserting immediately after chapter 7 the following new chapter:

''CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING

''§ 801. Congressional review

''(a)(1)(A) Before a rule can take effect as a final rule, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

''(i) a copy of the rule;

''(ii) a concise general statement relating to the rule; and

''(iii) the proposed effective date of the rule.

''(B) The Federal agency promulgating the rule shall make available to each House of Congress and the Comptroller General, upon request—

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

''(ii) the agency's actions relevant to sections 603, 604, 605, 607, and 609;

''(iii) the agency's actions relevant to sections 202, 203, 204, and 205 of the Unfunded Mandates Reform Act of 1995; and

''(iv) any other relevant information or requirements under any other Act and any relevant Executive orders, such as Executive Order No. 12866.

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

''(2)(A) The Comptroller General shall provide a report on each major rule to the committees of jurisdiction to each House of the Congress by the end of 12 calendar days after the submission or publication date as provided in section 802(b)(2). The report of the Comptroller General shall include an assessment of the agency's compliance with procedural steps required by paragraph (1)(B).

''(B) Federal agencies shall cooperate with the Comptroller General by providing information relevant to the Comptroller General's report under subparagraph (A).

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

''(A) the later of the date occurring 60 days after the date on which—

''(i) the Congress receives the report submitted under paragraph (1); or

''(ii) the rule is published in the Federal Register;

''(B) if the Congress passes a joint resolution of disapproval described under section 802 relating to the rule, and the President signs a veto of such resolution, the earlier date—

''(i) on which either House of Congress votes and fails to override the veto of the President; or

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

''(C) the date the rule would have otherwise taken effect, if not for this section (unless a joint resolution of disapproval under section 802 is enacted).

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

''(5) Notwithstanding paragraph (3), the effective date of a rule shall not be delayed by operation of this chapter beyond the date on which either House of Congress votes to reject a joint resolution of disapproval under section 802.

''(b) A rule shall not take effect (or continue) as a final rule, if the Congress passes a joint resolution of disapproval described under section 802.

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

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

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

''(B) necessary for the enforcement of criminal laws; or

''(C) necessary for national security.

''(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802 or the effect of a joint resolution of disapproval under this section.

''(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on the date occurring 60 days before the date the Congress adjourns sine die through the date on which the succeeding Congress first convenes, section 802 shall apply to such rule in the succeeding Congress.

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

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

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

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

''(3) A rule described under paragraph (1) shall take effect as a final rule as otherwise provided by law (including other subsections of this section).

''(e)(1) Section 802 shall apply in accordance with this subsection to any major rule that is published in the Federal Register (as a rule that shall take effect as a final rule) during the period beginning on November 20, 1994, through the date on which the Comprehensive Regulatory Reform Act of 1995 takes effect.

''(2) In applying section 802 for purposes of Congressional review, a rule described under paragraph (1) shall be treated as though—

''(A) such rule were published in the Federal Register (as a rule that shall take effect as a final rule) on the date of the enactment of the Comprehensive Regulatory Reform Act of 1995; and

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

''(3) The effectiveness of a rule described under paragraph (1) shall be as otherwise provided by law, unless the rule is made of no force or effect under section 802.

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

''(g) If the Congress does not enact a joint resolution of disapproval under section 802, no court or agency may infer any intent of the Congress from any action or inaction of the Congress with regard to such rule, related statute, or joint resolution of disapproval.

''§ 802. Congressional disapproval procedure

''(a) For purposes of this section, the term 'joint resolution' means only a joint resolution introduced during the period beginning on the date on which the report referred to in section 801(a) is received by Congress and ending 60 days thereafter, the matter after the resolving clause of which is as follows: 'That Congress disapproves the rule submitted by the ____ relating to ____, and such rule shall have no force or effect.'. (The blank spaces being appropriately filled in.)

''(b)(1) A resolution described in paragraph (1) shall be referred to the committees in each House of Congress with jurisdiction. Such a resolution may not be reported before the eighth day after its submission or publication date.

''(2) For purposes of this subsection the term 'submission or publication date' means the later of the date on which—

''(A) the Congress receives the report submitted under section 801(a)(1); or

''(B) the rule is published in the Federal Register.

''(c) If the committee to which is referred a resolution described in subsection (a) has not reported such resolution (or an identical resolution) at the end of 20 calendar days after the submission or publication date defined under subsection (b)(2), such committee may be discharged from further consideration of such resolution in the Senate upon a petition supported in writing by 30 Members of the Senate and in the House upon a petition supported in writing by one-fourth of the Members duly sworn and chosen or by motion of the Speaker supported by the Minority Leader, and such resolution shall be placed on the appropriate calendar of the House involved.

''(d)(1) When the committee to which a resolution is referred has reported, or when a committee is discharged (under subsection (c)) from further consideration of, a resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion to proceed to the consideration of the resolution, and all points of order against the resolution (and against consideration of resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

''(2) Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the resolution is not in order.

''(3) Immediately following the conclusion of the debate on a resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, the vote on final passage of the resolution shall occur.

''(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a resolution described in subsection (a) shall be decided without debate.

''(e) If, before the passage by one House of a resolution of that House described in subsection (a), that House receives from the other House a resolution described in subsection (a), then the following procedures shall apply:

''(1) The resolution of the other House shall not be referred to a committee.

''(2) With respect to a resolution described in subsection (a) of the House receiving the resolution—

''(A) the procedure in that House shall be the same as if no resolution had been received from the other House; but

''(B) the vote on final passage shall be on the resolution of the other House.

''(f) This section is enacted by Congress—

''(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

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

''§ 803. Special rule on statutory, regulatory, and judicial deadlines

''(a) In the case of any deadline for, relating to, or involving any rule which does not take effect (or the effectiveness of which is terminated) because of the enactment of a joint resolution under section 802, that deadline is extended until the date 1 year after the date of the joint resolution. Nothing in this subsection shall be construed to affect a deadline merely by reason of the postponement of a rule's effective date under section 801(a).

''(b) The term 'deadline' means any date certain for fulfilling any obligation or exercising any authority established by or under any Federal statute or regulation, or by or under any court order implementing any Federal statute or regulation.

''§ 804. Definitions

''(a) For purposes of this chapter—

''(1) the term 'Federal agency' means any agency as that term is defined in section 551(1) (relating to administrative procedure);

''(2) the term 'major rule' has the same meaning given such term in section 621(5); and

''(3) the term 'final rule' means any final rule or interim final rule.

''(b) As used in subsection (a)(3), the term 'rule' has the meaning given such term in section 551, except that such term does not include any rule of particular applicability including a rule that approves or prescribes for the future rates, wages, prices, services, or allowances therefor, corporate or financial structures, reorganizations, mergers, or acquisitions thereof, or accounting practices or disclosures bearing on any of the foregoing or any rule of agency organization, personnel, procedure, practice or any routine matter.

''§ 805. Judicial review

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

''§ 806. Applicability; severability

''(a) This chapter shall apply notwithstanding any other provision of law.

''(b) If any provision of this chapter or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

''§ 807. Exemption for monetary policy

''Nothing in this chapter shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

(c) EFFECTIVE DATE.—The amendment made by subsection (b) shall take effect on the date of enactment of this Act and shall apply to any rule that takes effect as a final rule on or after such effective date.

(d) TECHNICAL AMENDMENT.—The table of chapters for part I of title 5, United States Code, is amended by inserting immediately after the item relating to chapter 7 the following:

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

SEC. 7. REGULATORY ACCOUNTING.

(a) DEFINITIONS.—For purposes of this section, the following definitions apply:

(1) MAJOR RULE.—The term ''major rule'' has the same meaning as defined in section 621(5)(A)(i) of title 5, United States Code. The term shall not include—

(A) administrative actions governed by sections 556 and 557 of title 5, United States Code;

(B) regulations issued with respect to a military or foreign affairs function of the United States; or

(C) regulations related to agency organization, management, or personnel.

(2) AGENCY.—The term ''agency'' means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency, but shall not include—

(A) the General Accounting Office;

(B) the Federal Election Commission;

(C) the governments of the District of Columbia and of the territories and possessions of the United States, and their various subdivisions; or

(D) Government-owned contractor-operated facilities, including laboratories engaged in national defense research and production activities.

(b) ACCOUNTING STATEMENT.—

(1) IN GENERAL.—(A) The President shall be responsible for implementing and administering the requirements of this section.

(B) Not later than June 1, 1997, and each June 1 thereafter, the President shall prepare and submit to Congress an accounting statement that estimates the annual costs of major rules and corresponding benefits in accordance with this subsection.

(2) YEARS COVERED BY ACCOUNTING STATEMENT.—Each accounting statement shall cover, at a minimum, the 5 fiscal years beginning on October 1 of the year in which the report is submitted and may cover any fiscal year preceding such fiscal years for purpose of revising previous estimates.

(3) TIMING AND PROCEDURES.—(A) The President shall provide notice and opportunity for comment for each accounting statement. The President may delegate to an agency the requirement to provide notice and opportunity to comment for the portion of the accounting statement relating to that agency.

(B) The President shall propose the first accounting statement under this subsection not later than 2 years after the date of the enactment of this Act and shall issue the first accounting statement in final form not later than 3 years after such effective date. Such statement shall cover, at a minimum, each of the fiscal years beginning after the date of the enactment of this Act.

(4) CONTENT OF ACCOUNTING STATEMENT.—(A) Each accounting statement shall contain estimates of costs and benefits with respect to each fiscal year covered by the statement in accordance with this paragraph. For each such fiscal year for which estimates were made in a previous accounting statement, the statement shall revise those estimates and state the reasons for the revisions.

(B)(i) An accounting statement shall estimate the costs of major rules by setting forth, for each year covered by the statement—

(I) the annual expenditure of national economic resources for major rules, grouped by regulatory program; and

(II) such other quantitative and qualitative measures of costs as the President considers appropriate.

(ii) For purposes of the estimate of costs in the accounting statement, national economic resources shall include, and shall be listed under, at least the following categories:

(I) Private sector costs.

(II) Federal sector costs.

(III) State and local government administrative costs.

(C) An accounting statement shall estimate the benefits of major rules by setting forth, for each year covered by the statement, such quantitative and qualitative measures of benefits as the President considers appropriate. Any estimates of benefits concerning reduction in health, safety, or environmental risks shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(c) ASSOCIATED REPORT TO CONGRESS.—

(1) IN GENERAL.—At the same time as the President submits an accounting statement under subsection (b), the President, acting through the Director of the Office of Management and Budget, shall submit to Congress a report associated with the accounting statement (hereinafter referred to as an ''associated report''). The associated report shall contain, in accordance with this subsection—

(A) analyses of impacts; and

(B) recommendations for reform.

(2) ANALYSES OF IMPACTS.—The President shall include in the associated report the following:

(A) Analyses prepared by the President of the cumulative impact of major rules in Federal regulatory programs covered in the accounting statement on the following:

(i) The ability of State and local governments to provide essential services, including police, fire protection, and education.

(ii) Small business.

(iii) Productivity.

(iv) Wages.

(v) Economic growth.

(vi) Technological innovation.

(vii) Consumer prices for goods and services.

(viii) Such other factors considered appropriate by the President.

(B) A summary of any independent analyses of impacts prepared by persons commenting during the comment period on the accounting statement.

(3) RECOMMENDATIONS FOR REFORM.—The President shall include in the associated report the following:

(A) A summary of recommendations of the President for reform or elimination of any Federal regulatory program or program element that does not represent sound use of national economic resources or otherwise is inefficient.

(B) A summary of any recommendations for such reform or elimination of Federal regulatory programs or program elements prepared by persons commenting during the comment period on the accounting statement.

(d) GUIDANCE FROM OFFICE OF MANAGEMENT AND BUDGET.—The Director of the Office of Management and Budget shall, in consultation with the Council of Economic Advisers, provide guidance to agencies—

(1) to standardize measures of costs and benefits in accounting statements prepared pursuant to sections 3 and 7 of this Act, including—

(A) detailed guidance on estimating the costs and benefits of major rules; and

(B) general guidance on estimating the costs and benefits of all other rules that do not meet the thresholds for major rules; and

(2) to standardize the format of the accounting statements.

(e) RECOMMENDATIONS FROM CONGRESSIONAL BUDGET OFFICE.—After each accounting statement and associated report submitted to Congress, the Director of the Congressional Budget Office shall make recommendations to the President—

(1) for improving accounting statements prepared pursuant to this section, including recommendations on level of detail and accuracy; and

(2) for improving associated reports prepared pursuant to this section, including recommendations on the quality of analysis.

(f) JUDICIAL REVIEW.—No requirements under this section shall be subject to judicial review in any manner.

SEC. 8. STUDIES AND REPORTS.

(a) RISK ASSESSMENTS.—The Administrative Conference of the United States shall—

(1) develop and carry out an ongoing study of the operation of the risk assessment requirements of subchapter III of chapter 6 of title 5, United States Code (as added by section 4 of this Act); and

(2) submit an annual report to the Congress on the findings of the study.

(b) ADMINISTRATIVE PROCEDURE ACT.—Not later than December 31, 1996, the Administrative Conference of the United States shall—

(1) carry out a study of the operation of the Administrative Procedure Act (as amended by section 3 of this Act); and

(2) submit a report to the Congress on the findings of the study, including proposals for revision, if any.

SEC. 9. MISCELLANEOUS PROVISIONS.

(a) EFFECTIVE DATE.—Except as otherwise provided, this Act and the amendments made by this Act shall take effect on the date of enactment.

(b) SEVERABILITY.—If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment

to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

NOMINATION OF DR. HENRY FOSTER

Mr. LEVIN. Mr. President, we debated today whether a minority of members of the Senate will permit Dr. Henry Foster a vote on the confirmation of his nomination.

Dr. Foster is qualified to be Surgeon General of the United States. His 38-year career as a physician has reflected his concern for the medically underserved in our society and most clearly for young people. He has delivered more than 10,000 babies and trained hundreds of young doctors.

Unfortunately, his nomination has become a pawn in the game of Presidential politics. Apparently, some of our colleagues see an advantage in the Republican Presidential nominating process to using the issue of abortion as a rallying cry to frustrate the confirmation process. If a bipartisan majority of the U.S. Senate is prepared to vote to confirm the President's appointment, that vote should occur and Dr. Foster should be Surgeon General.

Pure and simple, the excuse for denying a vote to Dr. Foster is that he has performed a legal medical procedure on behalf of a tiny percentage of his patients.

Some of my colleagues in the Senate oppose a woman's right to choose on abortion, and that is their right. As lawmakers, they have the right to try to regulate it within constitutional limits and indeed, through the route of a constitutional amendment, they may even try to prohibit it. We have debated, and I'm sure we will again, debate that issue in this Chamber.

However, we should not try to turn Dr. Foster's nomination into that debate, because doing so is neither fair to the nominee, nor wise for the Nation.

I think Dr. Foster's views on abortion echo that of the vast majority of Americans. Abortion should be safe, legal, and rare. Now that last word rare is important. It's a word many people use when they talk about abortion, but Dr. Foster hasnt just talked about making abortion rare—he has done something about it.

Dr. Foster's I Have a Future program in Tennessee is considered an effective approach to teen pregnancy prevention. Indeed President Bush considered Dr. Foster's program one of his Thousand Points of Light, an outstanding example of Americans taking their own initiatives to make our country healthier and stronger. In this program, Dr. Foster has focused on helping young people develop confidence and self-esteem, because he knows that the teenager who can say ''I have a future'' is the teenager who can say ''I don't want to give up that future by having a baby.''

The qualities of leadership and vision Dr. Foster demonstrated in creating this program will make him a fine Surgeon General.

I was moved by Dr. Foster's testimony before the Labor and Human Resources committee and paid a visit in my State to a program that shares many of the goals he has achieved in his I Have A Future program.

At Detroit's Northern High School, the Michigan Metro Girl Scout Council, with support from the W.K. Kellogg Foundation, has developed the Jayhawk Teen Center. The center provides young people with a safe, clean, and attractive place to come after school. It's a place to play a game of checkers' or a game of pool or to use a computer to log onto the Internet. It's also a place where young people learn how to resolve conflicts without violence, how to avoid the dead end street of substance abuse, and how to practice sexual responsibility. A team of four student managers runs this center, and I wish you could see the pride on their faces when they describe the difference it's made in their lives and the lives of their fellow student. Here too, young people are realizing they have a future.

When I met with these students, I told them about Dr. Foster, the work he had done and why I thought he would make an even greater contribution to our country as Surgeon General. But I also told them it was possible his nomination would not even be allowed to come up for a vote. They were puzzled by that. They couldn't understand how a good man, a man who had done all Dr. Foster has done, could be denied that opportunity. And, I do not think the American people will understand it either. They won't understand why Presidential politicking should prevent us from considering the nomination of a physician so qualified for this position.

Mr. President, I voted to invoke cloture on the nomination. The President is entitled to his nominee, if a majority of the Senate consent. We should have that vote and find out.

NOMINATION OF DR. HENRY W. FOSTER

Mr. KENNEDY. Mr. President, I strongly support the nomination of Dr. Henry Foster to be Surgeon General of the United States. Earlier today, the Senate narrowly rejected an attempt to cut off the unconscionable filibuster being waged against him. I want to take this opportunity to review the case in more detail for Dr. Foster.

Dr. Foster is a distinguished physician who has dedicated his career to improving the quality of health care for women and children. Throughout his 38-year career in medicine, he has had a substantial influence on the quality of health care through his own practice, his teaching, and his community leadership.

His outstanding record as a physician, community leader, medical educator, and public servant make him superbly qualified for this important position.

I am pleased that we have made it this far in the nomination process, and that we are on the road to bringing this nomination up for a final vote. But opponents to this nomination are intent on a filbuster, and we must invoke cloture in order to get the nomination to a vote. Those who believe that this nomination deserves a vote must vote for cloture to make that happen.

Cloture is only the first step on the road to fairness. The second step—the step that counts—is the up or down vote on the nomination by the entire Senate.

Throughout this nomination process, several Republicans have stated that, in fairness, the nomination should go before the entire Senate for a final vote. Some Members have suggested that by allowing a cloture vote, the majority leader will be giving the nomination the fair consideration it deserves. They have suggested that a vote on cloture is the same as a vote on the nomination. Obviously, that is wrong and misleading.

Senators who feel strongly about the issue of fairness should vote for cloture, even if they intend to vote against the nomination itself. It is wrong to filibuster this nomination, and Senators who believe in fairness will not let a minority of the Senate deny Dr. Foster his vote by the entire Senate.

We do a disservice to Dr. Foster, the Senate and the Nation as a whole by prolonging this process. The Nation has now been without a Surgeon General for 6 months, and there is no justification for further delay.

Dr. Foster has demonstrated his impressive qualifications, his character, and his vision for the future of health care in this country. During the committee hearings, he successfully put to rest the charges attacking his character and his ability. He earned the admiration and respect of the committee and the American public.

Dr. Foster has developed innovative and effective approaches to some of the most difficult medical and social challenges facing communities across the Nation today. He began his unselfish crusade early in his career, and at every stage, he has been an inspiring example of personal sacrifice and service to others.

During the Labor Committee hearings, Dr. Foster ran the gauntlet of the committee and emerged with flying colors. With real and very moving eloquence, he described his background, his career, and his vision for the future of health care in America.

In doing so, he demonstrated his impressive qualifications for Surgeon General, and successfully dismantled all of the objections raised against him. Dr. Foster had the opportunity to make his case, and he did so very well.

He developed a model prenatal care program to improve health care for expectant mothers and their babies. He