

103^D CONGRESS
2^D SESSION

H. R. 4949

To amend title 5, United States Code, to reform Federal administrative procedures and improve the regulatory process.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 12, 1994

Mr. FRANKS of New Jersey (for himself, Mr. MEEHAN, Mr. GALLO, and Mr. DELAY) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to reform Federal administrative procedures and improve the regulatory process.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Administrative Proce-
5 dure Reform Act of 1994”.

6 **SEC. 2. CONGRESSIONAL FINDINGS.**

7 The Congress finds the following:

8 (1) The cost and burden of regulations have
9 risen to historic highs.

1 (2) The number of people writing Federal regu-
2 lations has grown dramatically from 106,000 in
3 1989 to 122,440 in 1992—a 15 percent increase in
4 just 3 years.

5 (3) The Federal Government currently has
6 125,000 bureaucrats working on 5,000 regulations
7 promulgated by 59 different Federal agencies.

8 (4) The 1993 regulatory output of the Federal
9 Government numbered 69,688 pages of regulations,
10 with the Code of Federal Regulations taking up 21
11 feet of shelf space.

12 (5) The Office of the Federal Register, the pub-
13 lisher of the journal of Federal agency rule making,
14 now teaches classes to assist manufacturers in read-
15 ing new regulations and proposals.

16 (6) The total cost of administering the Federal
17 regulatory apparatus in fiscal year 1993 was
18 \$11,300,000,000.

19 (7) It is estimated that the total cost of regula-
20 tion of manufacturing approximated, and in some
21 studies exceeded, aggregate after-tax manufacturing
22 profits.

23 (8) The cost of regulatory compliance drains
24 funds for research, job creation, training, wages, and
25 employment benefits.

1 (9) In a February 1993 survey of leading man-
2 ufacturing chief executive officers, government man-
3 dates, including regulations, were identified as the
4 government policies which have done the most to
5 harm United States manufacturing employment in
6 the past 5 years.

7 (10) The vast scope, rigid construction, and
8 costly impact of State and Federal regulatory
9 schemes has created the perception of a hostile cli-
10 mate for manufacturing.

11 **SEC. 3. RULE MAKING NOTICES FOR MAJOR RULES.**

12 Section 553 of title 5, United States Code, is amend-
13 ed by adding at the end the following:

14 “(f)(1)(A) The head of an agency shall publish in the
15 Federal Register, at least 90 days before the date of publi-
16 cation of general notice under subsection (b) for a pro-
17 posed major rule, a notice of intent to engage in rule mak-
18 ing.

19 “(B) A notice under subparagraph (A) for a proposed
20 major rule shall include, to the extent possible, the infor-
21 mation required to be included in a Regulatory Impact
22 Analysis for the rule under section 5(c) (1), (2), and (8)
23 of the Administrative Procedure Reform Act of 1994.

1 “(2) The head of an agency shall include in a general
2 notice under subsection (b) for a major rule proposed by
3 the agency—

4 “(A) a final Regulatory Impact Analysis for the
5 rule prepared in accordance with section 5 of the
6 Administrative Procedure Reform Act of 1994; and

7 “(B) clear delineation of all changes in the in-
8 formation included in the final Regulatory Impact
9 Analysis under section 5(c)(1) and (2) of the Admin-
10 istrative Procedure Reform Act of 1994 from any
11 such information that was included in the notice for
12 the rule under paragraph (1)(B) of this subsection.

13 “(3) In this subsection, the term ‘major rule’ has the
14 meaning given that term in section 5(b) of the Administra-
15 tive Procedure Reform Act of 1994.”.

16 **SEC. 4. HEARING REQUIREMENT FOR PROPOSED RULES;**
17 **EXTENSION OF COMMENT PERIOD.**

18 (a) HEARING REQUIREMENT.—Section 553 of title 5,
19 United States Code, is further amended—

20 (1) in subsection (b), in the matter following
21 paragraph (3), by inserting “(except subsection
22 (g))” after “this subsection”; and

23 (2) by adding after subsection (f) (as added by
24 section 3 of this Act) the following:

1 “(g) If more than 100 interested persons acting indi-
2 vidually submit comments to an agency regarding any rule
3 proposed by the agency, the agency shall hold a public
4 hearing on the proposed rule.”.

5 (b) EXTENSION OF COMMENT PERIOD.—Section 553
6 of title 5, United States Code, is further amended by add-
7 ing after subsection (g) (as added by subsection (a)(2) of
8 this section) the following:

9 “(h) If during the 30-day period beginning on the
10 date of publication of notice under subsection (f)(1)(A) for
11 a proposed major rule, or if during the 30-day period be-
12 ginning on the date of publication or service of notice re-
13 quired by subsection (b) for a proposed rule, more than
14 100 persons individually contact the agency to request an
15 extension of the period for making submissions under sub-
16 section (c) pursuant to the notice, the agency—

17 “(1) shall provide an additional 30-day period
18 for making those submissions; and

19 “(2) may not adopt the rule until after that ad-
20 ditional period.”.

21 (c) RESPONSE TO COMMENTS.—Section 553(c) of
22 title 5, United States Code, is amended—

23 (1) by inserting “(1)” after “(c)”; and

24 (2) by adding at the end the following:

1 “(2) The head of an agency shall publish in the Fed-
2 eral Register with each rule published under section
3 552(a)(1)(D) of this title, responses to the substance of
4 all comments received by the agency regarding the rule.”.

5 **SEC. 5. REGULATORY IMPACT ANALYSIS.**

6 (a) APPLICATION OF EXECUTIVE ORDER AS STATU-
7 TORY REQUIREMENT.—Except as otherwise provided in
8 this section, Executive Order 12866 (relating to Federal
9 regulation requirements and regulatory impact analysis),
10 as in effect on September 30, 1993, shall apply to each
11 agency in accordance with the provisions of the Order.

12 (b) DEFINITION OF MAJOR RULE IN ORDER.—Not-
13 withstanding section 1(b) of the Order, for purposes of
14 subsection (a) of this section, the term “major rule”
15 means any proposed regulatory action—

16 (1) which affects more than 100 persons; or

17 (2) compliance with which will require the ex-
18 penditure of more than \$1,000,000 by any person
19 which is not a Federal agency.

20 (c) CONTENTS OF REGULATORY IMPACT ANALY-
21 SES.—In lieu of the information specified in section 3(d)
22 of the Order, each preliminary and final Regulatory Im-
23 pact Analysis required under section 3 of the Order for
24 a rule shall contain the following:

1 (1) An explanation of the necessity, appro-
2 priateness and reasonableness of the rule.

3 (2) A description of the current condition that
4 the rule will address and how that condition will be
5 affected by the rule.

6 (3) A statement that the rule does not conflict
7 with nor duplicate any other rule, or an explanation
8 of why the conflict or duplication exists.

9 (4) A statement of whether the rule is in accord
10 with or in conflict with any legal precedent.

11 (5) A statement of the factual, scientific, or
12 technical basis for the agency's determination that
13 the rule will accomplish its intended purpose.

14 (6) A statement that describes and, to the ex-
15 tent practicable, quantifies the risks to human
16 health or the environment to be addressed by the
17 rule.

18 (7) A demonstration that the rule provides the
19 least costly or least intrusive approach for meeting
20 its intended purpose.

21 (8) A description of any alternative approaches
22 considered by the agency or suggested by interested
23 persons and the reasons for their rejection.

24 (9) An estimate of the nature and number of
25 persons to be regulated or affected by the rule.

1 (10) An estimate of the costs that will be in-
2 curred by persons in complying with the rule.

3 (11) An evaluation of the costs versus the bene-
4 fits derived from the rule, including evaluation of
5 how those benefits outweigh the cost.

6 (12) Whether the rule will require onsite inspec-
7 tions.

8 (13) An estimate of the paperwork burden on
9 persons regulated or affected by the rule, such as
10 the number of forms, impact statements, surveys,
11 and other documents required to be completed by
12 the person under the rule.

13 (14) Whether persons will be required by the
14 rule to maintain any records which will be subject to
15 inspection.

16 (15) Whether persons will be required by the
17 rule to obtain licenses, permits, or other certifi-
18 cations, and the fees and fines associated therewith.

19 (16) Whether persons will be required by the
20 rule to appear before the agency.

21 (17) Whether persons will be required by the
22 rule to disclose information on materials or proc-
23 esses, including trade secrets.

24 (18) Whether persons will be required by the
25 rule to report any particular type of incidents.

1 (19) Whether persons will be required by the
2 rule to adhere to design or performance standards.

3 (20) Whether persons may need to retain or
4 utilize any lawyer, accountant, engineer, or other
5 professional consultant in order to comply with the
6 regulations.

7 (21) An estimate of the costs to the agency for
8 implementation and enforcement of the regulations.

9 (22) Whether the agency can be reasonably ex-
10 pected to implement the rule with the current level
11 of appropriations.

12 (23) A statement that any person may submit
13 comments on the Regulatory Impact Analysis to the
14 Administrator of the Office of Information and Reg-
15 ulatory Affairs.

16 (d) DEFINITIONS.—In this section—

17 (1) the term “Order” means Executive Order
18 12866, as in effect on September 30, 1993; and

19 (2) each of the terms “agency”, “regulation”,
20 and “rule” has the meaning given that term in sec-
21 tion 1 of the Order.

22 **SEC. 6. ADDITIONAL RESPONSIBILITIES OF DIRECTOR OF**
23 **THE OFFICE OF MANAGEMENT AND BUDGET.**

24 An agency may not adopt a major rule unless the
25 final Regulatory Impact Analysis for the rule is approved

1 in writing by the Director of the Office of Management
2 and Budget or by an individual designated by the Director
3 for that purpose.

4 **SEC. 7. STANDARD OF CLARITY.**

5 The head of an agency may not publish in the Fed-
6 eral Register any proposed major rule, summary of a pro-
7 posed major rule, or Regulatory Impact Analysis unless
8 the Director of the Office of Management and Budget cer-
9 tifies that the proposed major rule, summary, or Analy-
10 sis—

11 (1) is written in a reasonably simple and under-
12 standable manner and is easily readable;

13 (2) is written to provide adequate notice of the
14 content of the rule, summary, or Analysis to affected
15 persons and interested persons that have some sub-
16 ject matter expertise;

17 (3) conforms to commonly accepted principles
18 of grammar;

19 (4) contains only sentences that are as short as
20 practical and organized in a sensible manner; and

21 (5) does not contain any double negatives, con-
22 fusing cross references, convoluted phrasing, unrea-
23 sonably complex language, or term of art or word
24 with multiple meanings that may be misinterpreted

1 and is not defined in the rule, summary, or analysis,
2 respectively.

3 **SEC. 8. REPORT BY OIRA.**

4 The Administrator of the Office of Information and
5 Regulatory Affairs shall submit a report to the Congress
6 no later than 12 months after the date of the enactment
7 of this Act containing an analysis of rule making proce-
8 dures of Federal agencies and an analysis of the impact
9 of those rule making procedures on the regulated public
10 and regulatory process.

11 **SEC. 9. DEFINITIONS.**

12 For purposes of this Act—

13 (1) except as provided in section 5(d)(2), each
14 of the terms “agency”, “rule”, and “rule making”
15 has the meaning given that term in section 551 of
16 title 5, United States Code; and

17 (2) the term “major rule” has the meaning
18 given that term in section 5(b).

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