

REGULATION IN PLAIN LANGUAGE ACT OF 2006

SEPTEMBER 14, 2006.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. TOM DAVIS of Virginia, from the Committee on Government Reform, submitted the following

R E P O R T

[To accompany H.R. 4809]

[Including cost estimate of the Congressional Budget Office]

The Committee on Government Reform, to whom was referred the bill (H.R. 4809) to amend the provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act, to ensure usability and clarity of information disseminated by Federal agencies, and to facilitate compliance with Federal paperwork requirements, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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COMMITTEE STATEMENT AND VIEWS

PURPOSE AND SUMMARY

The Regulation in Plain Language Act of 2006 (H.R. 4809) would require that agencies write regulations in plain, understandable language. It would define best practices for plain language writing. The legislation would require agencies to identify a plain language coordinator, publish guidelines for agency implementation, provide training to their employees, and periodically report to Congress on their progress.

When regulations are written in plain, understandable language it increases compliance, reduces implementation costs for agencies, increases transparency in government, allows for greater stakeholder input in the rulemaking process, and enhances the public trust of government.

BACKGROUND AND NEED FOR LEGISLATION

James Madison wrote in the Federalist No. 62 that, "It will be of little avail to the people, that the laws are made by men of their own choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood." Since our founding, it has been recognized that coherence and clarity in our laws, and later regulations, are necessary for the creation of a strong republic.

The need for clarity in rulemaking is even greater today because of the increase in the size of government and the multitude of regulations that exist. The burden of Federal regulations on the American public continues to grow. In a report authored for the US Small Business Administration's Office of Advocacy, Professor Mark Crain of Lafayette College projected total off-budget regulatory costs for 2005 to be \$1.1 trillion. Federal agencies that write, administer, and enforce regulations spent \$38.3 billion in 2005 and employed over 235,000 employees, as reported by the joint Weidenbaum Center and Mercatus Center study. In 2005, the Federal Register included 73,870 pages and published 3,943 new final rules. Under this constant deluge of regulation, clear communication is necessary to accomplish the goals of those rules.

The idea of using plain language in crafting regulations is not new to the federal government. During the 1970s, President Nixon encouraged the use of plain language when he ordered that the Federal Register be written in "layman's terms." President Carter issued Executive Orders that required regulations to be "easy-to-understand by those who were required to comply with them." In 1993, President Clinton issued Executive Order 12866 and ordered that agencies draft their regulations "to be simple and easy to understand with the goal of minimizing the potential for uncertainty." It also required agencies, when providing information to the public, that it "shall be in plain, understandable language." In 1998 he continued his efforts to incorporate plain language in regulations by issuing a Presidential Memorandum that formalized the requirement for federal employees to write in plain language. The Memorandum stated the requirement clearly, "the Federal Government's writing must be in plain language. By using plain language, we send a clear message about what the Government is doing, what it requires, and what services it offers. Plain language saves

the Government and the private sector time, effort, and money.” While the current administration does not have a formal plain language initiative, it does require agencies to follow the requirements found in Executive Order 12866, including the use of plain language. However, federal regulatory agencies continue to use “bureaucratic prose” and rarely try to incorporate plain language in their documents.

On February 28, 2006, Chairwoman Candice Miller and Ranking Member Stephen Lynch of the Subcommittee on Regulatory Affairs introduced the Regulation in Plain Language Act (H.R. 4809). On March 1, 2006, the Subcommittee on Regulatory Affairs held a hearing entitled, “Plain Language Regulations: Helping the American Public Understand the Rules.” Chairwoman Miller described the benefits of using plain language including: saving the government and the taxpayer time, effort, and money. Federal agencies use of jargon, complex sentences, and ambiguous terms leads to frustration, confusion, and often non-compliance. She stated that “you shouldn’t have to be a lawyer to apply for a small business loan.” One of the witnesses, Joseph Kimble, a professor at the Thomas Cooley School of Law in Michigan testified to the many empirical studies demonstrating the cost savings to businesses and government when plain language is used in regulation and communication with the public. One example he cited was of a rewritten U.S. Department of Veterans Affairs letter to veterans. After it was rewritten the number of calls to regional information centers decreased from 1100 a year to less than 200. Dr. Annetta Cheek, Vice-Chair of the Center for Plain Language, catalogued examples of government forms, letters, and rules that have been rewritten in plain language and the dramatic improvements in clarity. She spoke strongly in favor of the benefits of H.R. 4809 and what it could do to create more positive change in the federal government. The President of the National Small Business Association, Todd McCracken, reminded the panel about the disproportionate cost of compliance for small businesses. Those costs often include hiring outside assistance to comply with federal rules.

Before the benefits of plain language can be realized, H.R. 4809 needs to become law. In order for the federal government to realize the cost savings in compliance assistance and non-compliance and for businesses and taxpayers to reduce their frustration and burden associated with compliance, additional responsibilities for writing in plain language must be made statutory for all federal agencies.

LEGISLATIVE HISTORY

Representatives Candice Miller and Stephen Lynch introduced the Regulation in Plain Language Act (H.R. 4809) on February 28, 2006. On March 1, 2006, the Subcommittee on Regulatory Affairs held a hearing entitled, “Plain Language Regulations: Helping the American Public Understand the Rules” to investigate the need for legislation to improve the federal government’s performance in plain language writing and communication of regulations.

On June 8, 2006, the Committee on Government Reform held a mark up of the Regulation in Plain Language Act (H.R. 4809). The Committee, with a quorum present, reported the bill favorably by rollcall vote, unanimously.

SECTION-BY-SECTION

Section 1. Short title

This section would provide that the bill be referenced as the Regulation in Plain Language Act of 2006.

Section 2. Definitions

This section would define the words “agency” and “regulation” in their common and understood forms.

Section 3. Procedures for ensuring usability and clarity in rule-making

Section 3(a) would amend provisions associated with the Paperwork Reduction Act to include a definition of plain language for the purposes of the bill. Plain language would be defined as language that is clear and readily understandable to the intended reader including: using short words, sentences, and paragraphs; using active verbs; explaining complex or technical terms; minimizing cross-references; using pictures, tables and other visual tools; organizing the document logically and chronologically; addressing separate audiences separately; placing general material before exceptions; and following other best practices of plain language writing.

Section 3(b) would identify responsibilities of federal agencies to ensure regulations are written in plain language by requiring them to identify an agency official to coordinate these functions, to establish a process to implement these requirements, and to publish their guidelines to achieve plain language writing after consultation with other agencies and stakeholders. This subsection would also require that agencies provide training to their employees on plain language writing. Agencies would also be required to report to the House Committee on Government Reform and the Senate Committee on Homeland Security & Government Affairs annually for the first 2 years upon enactment and once every 3 years after that on implementation, consistency with other federal agency guidelines, and examples of improvements made to regulations as a result of their implementation of this law.

EXPLANATION OF AMENDMENTS

No amendments were adopted in Committee.

COMMITTEE CONSIDERATION

On June 8, 2006, the Committee met in open session and ordered reported favorably the bill, H.R. 4809, by voice vote, a quorum being present.

ROLLCALL VOTES

No rollcall votes were taken on H.R. 4809.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1 requires a description of the application of this bill to the legislative branch where the bill relates to the terms and conditions of employment or access to public services and accommodations. This bill requires agencies to

write regulations in plain, understandable language. It defines best practices for plain language writing. The legislation would require agencies to identify a plain language coordinator, publish guidelines for agency implementation, provide training to their employees, and periodically report to Congress on their progress. As such this bill does not relate to employment or access to public services and accommodations.

Legislative branch employees and their families, to the extent that they are otherwise eligible for the benefits provided by this legislation, have equal access to its benefits.

STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Under clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee must include a statement citing the specific powers granted to Congress to enact the law proposed by H.R. 4809. Article I, Section 8, Clause 18 of the Constitution of the United States grants the Congress the power to enact this law.

FEDERAL ADVISORY COMMITTEE ACT

The Committee finds that the legislation does not establish or authorize the establishment of an advisory committee within the definition of 5 U.S.C. App., Section 5(b).

UNFUNDED MANDATE STATEMENT

Section 423 of the Congressional Budget and Impoundment Control Act (as amended by Section 101(a)(2) of the Unfunded Mandate Reform Act, P.L. 104-4) requires a statement whether the provisions of the reported include unfunded mandates. In compliance with this requirement the Committee has received a letter from the Congressional Budget Office included herein.

COMMITTEE ESTIMATE

Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs that would be incurred in carrying out H.R. 4809. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act.

BUDGET AUTHORITY AND CONGRESSIONAL BUDGET OFFICE COST
ESTIMATE

With respect to the requirements of clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974 and with respect to requirements of clause (3)(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 4809 from the Director of Congressional Budget Office:

JUNE 20, 2006.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4809, the Regulation in Plain Language Act of 2006.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

H.R. 4809—Regulation in Plain Language Act of 2006

H.R. 4809 would amend the Paperwork Reduction Act to require all federal agencies to ensure that regulations are written in plain language—clear and readily understandable to the intended reader. The legislation also would require each agency to designate a coordinator for its efforts to use plain language, establish a process to review compliance, publish guidelines on the use of plain language, require training for federal employees to use plain language, and provide regular reports on compliance.

CBO estimates that implementing H.R. 4809 would cost less than \$500,000 a year, subject to the availability of appropriated funds. Most provisions of the bill would codify and expand current practices of the federal government. Executive Order 12866 and the Presidential Memorandum on Plain Language (June 1, 1998) currently require government agencies to write regulations in language that is comprehensible to readers. Based on information from the Office of Management and Budget, CBO estimates that implementing this bill would not significantly increase the cost of preparing rulemaking documents.

H.R. 4809 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no effect on the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Matthew Pickford. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 44, UNITED STATES CODE

* * * * *

CHAPTER 35—COORDINATION OF FEDERAL INFORMATION POLICY

SUBCHAPTER I—FEDERAL INFORMATION POLICY

* * * * *

§ 3502. Definitions

As used in this subchapter—

(1) * * *

* * * * *

(13) the term “recordkeeping requirement” means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to—

(A) * * *

* * * * *

(D) report to third parties, the Federal Government, or the public regarding such records; **[and]**

(14) the term “penalty” includes the imposition by an agency or court of a fine or other punishment; a judgment for monetary damages or equitable relief; or the revocation, suspension, reduction, or denial of a license, privilege, right, grant, or benefit**[.]**; and

(15) the term “plain language” means language that is clear and readily understandable to the intended reader and complies with the following standards:

(A) Uses short words, sentences, and paragraphs.

(B) Uses active verbs.

(C) Contains explanations of legal, foreign, and technical terms, unless the terms are commonly understood.

(D) Avoids defining terms that are commonly understood.

(E) Uses personal pronouns to refer to affected persons and the responsible agency if helpful to improve clarity.

(F) Minimizes cross-references.

(G) Avoids sentences with double negatives or exceptions to exceptions.

(H) Uses tables, diagrams, pictures, maps, and vertical lists to improve clarity.

(I) Demonstrates logical organization.

(J) Addresses separate audiences separately.

(K) Places general material before exceptions and specialized information.

(L) Addresses processes covered by a rule in chronological order.

(M) Follows other best practices of plain language writing.

* * * * *

§ 3506. Federal agency responsibilities

(a) * * *

* * * * *

(d) With respect to information dissemination, each agency shall—

(1) * * *

* * * * *

(3) provide adequate notice when initiating, substantially modifying, or terminating significant information dissemination products; **[and]**

(4) not, except where specifically authorized by statute—

(A) * * *

* * * * *

(D) establish user fees for public information that exceed the cost of dissemination~~[\.]~~; and

(5) *ensure that regulations are written in plain, understandable language consistent with the definition of “plain language” in section 3502(15) of this title, through—*

(A) *designating an agency official as plain language coordinator;*

(B) *establishing a process for reviewing each regulation to ensure its compliance with this paragraph before publishing it in the Federal Register;*

(C) *publishing guidelines to implement this paragraph—*

(i) *not later than 120 days after the date of the enactment of this paragraph;*

(ii) *after consulting with other Federal agencies and the Interagency Committee on Government Information to promote consistency of application between agencies; and*

(iii) *after consulting with affected stakeholders;*

(D) *training employees who write regulations to write in plain language;*

(E) *reporting to the Committee on Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate annually for the first 2 years after the date of the enactment of this paragraph and once every 3 years thereafter on compliance with this paragraph, including—*

(i) *agency implementation of its guidelines;*

(ii) *agency actions to ensure consistency with other Federal agency guidelines; and*

(iii) *examples of some of the changes made to draft regulations in the previous year to conform with this paragraph.*

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