

105TH CONGRESS
2D SESSION

H. R. 4162

To improve public understanding of, and access to, the information and reasoning supporting significant Federal agency rulemaking proposals by specifying a consistent and informative format for Federal Register notices of such rulemaking actions.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1998

Mrs. CHENOWETH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To improve public understanding of, and access to, the information and reasoning supporting significant Federal agency rulemaking proposals by specifying a consistent and informative format for Federal Register notices of such rulemaking actions.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Informa-
5 tion Presentation Act of 1998”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

1 (1) There is a substantial lack of consistency in
2 the presentation of information explaining and sup-
3 porting Federal rulemaking actions when such infor-
4 mation is published with proposed and final rules in
5 the Federal Register.

6 (2) This lack of consistency makes it more dif-
7 ficult for the public and Congress to understand
8 rulemaking actions and their justification and to lo-
9 cate particular relevant information.

10 (3) Presidential Executive Order 12866, pro-
11 mulgated September 30, 1993, specifies certain ana-
12 lytical components for Federal rulemaking that pro-
13 vide a useful design for consistent organization of
14 the information presented in Federal Register rule-
15 making notices.

16 (4) Such a consistent format will facilitate con-
17 gressional, executive branch, and public review of
18 proposed rulemaking actions.

19 **SEC. 3. FORMATTING OF RULEMAKING ENTRIES IN THE**
20 **FEDERAL REGISTER.**

21 (a) SIGNIFICANT RULES.—This section applies to
22 each significant rule that is published in the Federal Reg-
23 ister as a general notice of proposed rulemaking, or as
24 a final or interim final substantive rule, under section 553
25 of title 5, United States Code.

1 (b) INFORMATION TO BE INCLUDED IN PROPOSED,
2 INTERIM FINAL, AND FINAL RULES.—Each agency shall,
3 in accordance with a uniform format to be established
4 (after public notice and an opportunity for public com-
5 ment) by the Office of the Federal Register, include in
6 the preamble (the “Supplementary Information”) to each
7 such significant rule, both as a proposed and as a final
8 or interim final rule, the information specified in this sub-
9 section.

10 (1) RULEMAKING STATUS.—

11 (A)(i) The agency shall describe whether,
12 and if so the reason that, the rule has been de-
13 termined to be—

14 (I) a significant rule; or

15 (II) a major rule under section 804(2)
16 of title 5, United States Code.

17 (ii) If the agency determines that a rule is
18 not a significant rule, the agency shall provide
19 the reasons and justifications for such deter-
20 mination using each of the factors described in
21 section 5(3).

22 (B) The agency shall identify the nature
23 and timing of any applicable legal deadline or
24 other good cause for the issuance of the rule

1 more quickly than the normal work schedule
2 would provide.

3 (C) The agency shall provide an expla-
4 nation as to whether the President, the Vice
5 President, or any official in the Executive Of-
6 fice of the President has waived any provision
7 of any relevant Executive order or related policy
8 directive applicable to the rulemaking. If any
9 cost-benefit analysis, risk assessment, or other
10 evaluation of the rule prepared by the agency
11 displays an important gap in the analytical in-
12 formation relied upon therein, the agency shall
13 provide an explanation as to why it is or is not
14 feasible or reasonable to delay the rulemaking
15 until those gaps in information are filled.

16 (2) REGULATORY POLICY OFFICER.—The agen-
17 cy shall provide the name, telephone number, and
18 position of the regulatory policy officer of the agency
19 responsible at each stage of the regulatory process
20 for fostering the development of effective, innovative,
21 and least burdensome regulations and furthering the
22 principles set forth in any relevant Executive order
23 or related policy directive related to rulemaking.

24 (3) CONSULTATION.—The agency shall describe
25 any consultations with stakeholders, formal advisory

1 bodies, and State, local, or tribal governments under
2 title II of Public Law 104–4 (2 U.S.C. 1531 et seq.)
3 or other applicable authority, identifying the individ-
4 uals involved and the issues discussed.

5 (4) NEED.—The agency shall identify any ap-
6 plicable law requiring the specific rulemaking and
7 separately describe any compelling public need for
8 undertaking the rulemaking, including a detailed ex-
9 planation of the need for preempting, or regulating
10 instead of, State, local, or tribal governments.

11 (5) LEGAL AUTHORITY.—The agency shall
12 identify the specific statutory provisions authorizing
13 the rule, the overall regulatory program involved,
14 and the scope of the statutory discretion of the
15 agency, if any, to regulate and the degree to which
16 the agency is regulating. Except in cases in which
17 the rule has no legal effect other than to implement
18 the literal wording of the applicable law, the agency
19 shall include in the preamble a legal analysis identi-
20 fying the scope of discretion available to the agency
21 in undertaking the rulemaking.

22 (6) ALTERNATIVES CONSIDERED.—The agency
23 shall identify the principal regulatory alternatives
24 considered by the agency before determining which

1 alternative to propose for public comment, or to
2 adopt in the final or interim final rule.

3 (7) ALTERNATIVE SELECTED.—Based on the
4 criteria set forth in title II of Public Law 104–4 (2
5 U.S.C. 1531 et seq.) and any relevant Executive
6 order or related policy directive related to rule-
7 making, the agency shall identify and explain in rea-
8 sonable detail the reasons why the agency selected
9 the alternative to be adopted or adopted in the rule.

10 (8) COSTS.—The agency shall estimate the di-
11 rect and indirect costs of the rule, which shall be
12 stated to the extent reasonably possible as monetized
13 costs, quantified costs, or qualitative costs, in that
14 order.

15 (9) IMPACTS.—The agency shall identify the en-
16 tities that will be significantly impacted through
17 compliance with the rule, and shall evaluate and de-
18 scribe the nature of the impacts that are anticipated
19 to be caused by the costs to be imposed or other ac-
20 tions the entities are anticipated to take in order to
21 come into compliance with the rule. The agency shall
22 summarize any analysis or evaluation conducted
23 under title II of Public Law 104–4 (2 U.S.C. 1531
24 et seq.) or chapter 6 of title 5, United States Code,
25 or if the agency did not conduct such an analysis or

1 evaluation, provide an explanation as to why an
2 analysis or evaluation was not performed.

3 (10) BENEFITS.—The agency shall estimate the
4 direct and indirect benefits of the rule. These bene-
5 fits shall be stated to the extent possible as mone-
6 tized benefits, quantified benefits, or qualitative ben-
7 efits.

8 (11) CERTIFICATION OF COMPLIANCE.—The
9 agency shall state whether any official in the Execu-
10 tive Office of the President carried out a review of
11 the rule under any relevant Executive order or relat-
12 ed policy directive related to rulemaking. If such a
13 review has been carried out, the agency shall briefly
14 describe the individuals involved, the timing of the
15 review process, the procedural actions taken by those
16 involved, and the nature of any issues raised in the
17 course of such review. If any such official found the
18 issuance of the rule to be consistent with the regu-
19 latory principles set forth in such Executive order or
20 related policy directive related to rulemaking, the
21 agency shall identify the official, and describe the
22 nature of the communication involved.

23 (c) ADDITIONAL INFORMATION TO BE INCLUDED IN
24 INTERIM FINAL AND FINAL RULES.—

1 (1) IN GENERAL.—Each agency shall, in ac-
2 cordance with a uniform format to be established
3 (after public notice and opportunity for public com-
4 ment) by the Office of the Federal Register, include
5 in the preamble (the “Supplementary Information”)
6 to each such significant rule, as a final or interim
7 final rule, the information specified in this sub-
8 section.

9 (2) SIGNIFICANT ISSUES.—

10 (A) Each agency shall provide a brief de-
11 scription of the significant issues raised—

12 (i) by the public in a statement placed
13 in the rulemaking file;

14 (ii) in consultations described in sub-
15 section (b)(3) by formal advisory bodies;
16 and

17 (iii) by any official in the Executive
18 Office of the President carrying out a re-
19 view under any relevant Executive order or
20 related policy directive related to rule-
21 making.

22 (B) If, under subparagraph (A)(iii), an of-
23 ficial did not raise any significant issue, the
24 agency shall provide a description to that effect.

25 The agency shall identify and describe any im-

1 portant gap in analytical information relied
2 upon in any cost-benefit analysis, risk assess-
3 ment, or other evaluation of the rule prepared
4 by the agency, and any assumptions and jus-
5 tification for such assumptions that were used
6 to fill those gaps.

7 (3) CONFLICT RESOLUTION.—The agency shall
8 describe in reasonable detail, both concerning the
9 specific review procedures used and also the sub-
10 stantive concerns raised—

11 (A) whether the rule was returned to the
12 agency for reconsideration by any official in the
13 Executive Office of the President, the nature of
14 any reasons for such return, and the nature of
15 the response of the agency to such return;

16 (B) the nature of any involvement by the
17 President or Vice President or their respective
18 staff in reviewing the rule, or any earlier ver-
19 sion of the rule, submitted for review by any of-
20 ficial in the Executive Office of the President
21 under any relevant Executive order or related
22 policy directive related to rulemaking; and

23 (C) the nature of the resolution of any dis-
24 agreement involved in such review or return.

25 (4) SIGNIFICANT SUBSTANTIVE CHANGES.—

1 (A) The agency shall provide a brief de-
2 scription of any substantive changes to the rule
3 made—

4 (i) following the end of the period for
5 public comment and the submission of the
6 draft final or interim final rule for review
7 by any official in the Executive Office of
8 the President under any relevant Executive
9 order or related policy directive related to
10 rulemaking; and

11 (ii) during any review of the draft
12 final or interim final rule by any official in
13 the Executive Office of the President
14 under any relevant Executive order or re-
15 lated policy directive related to rulemaking.

16 (B) The agency shall identify the individ-
17 ual primarily responsible for suggesting any
18 such substantive change, if such individual is
19 not within the program office directly respon-
20 sible for drafting the rule.

21 (5) COST-BENEFIT DETERMINATION.—To the
22 extent permitted by law and as applicable, the agen-
23 cy shall provide a reasoned statement explaining the
24 way in which the estimated benefits of the rule jus-
25 tify its estimated costs, as described under sub-

1 sections (b)(8) and (b)(10), and any other impacts,
2 as described under subsection (b)(9). To the extent
3 that the agency relies upon qualitative benefits to
4 justify the action of the agency, the agency shall also
5 describe the subjective nature and uncertainties in-
6 herent in such a statement of qualitative benefits.

7 (d) GOOD CAUSE EXCEPTION.—When the agency for
8 good cause finds, and incorporates the finding and a brief
9 statement of reasons therefor in the rule, that providing
10 any portion of the information required by subsections (b)
11 and (c) is impracticable, unnecessary, or contrary to the
12 public interest, the agency may issue the rule without pro-
13 viding such portion of the information required. The agen-
14 cy shall identify in the preamble to the rule the portion
15 of the information that is not being provided and shall
16 state the reasons for not providing the preamble and when
17 the preamble will be provided. The agency shall make
18 every reasonable effort to provide such information before
19 the effective date of the rule.

20 **SEC. 4. PUBLIC NOTICE.**

21 Each agency shall, on an annual basis and in accord-
22 ance with a schedule and uniform format to be established
23 (after public notice and opportunity for public comment)
24 by the Office of the Federal Register, publish a notice in

1 the Federal Register that contains the following specified
2 statistics:

3 (1) The number of rules published as proposed,
4 interim final, and final rules.

5 (2) The number of rules under paragraph (1)
6 that are discretionary, in contrast to rules the con-
7 tents of which were specifically mandated by law as
8 described under section 3(b)(5).

9 (3) The number of pages in the Federal Reg-
10 ister for each category of rule under paragraphs (1)
11 and (2).

12 (4) The number of those rules that are—

13 (A) significant rules; and

14 (B) major rules under section 804(2) of
15 title 5, United States Code.

16 (5) The number of those rules reviewed under
17 any relevant Executive order or related policy direc-
18 tive related to rulemaking, the number of rules sub-
19 stantively changed during such reviews, and the
20 number of pertinent actions taken during such re-
21 views.

22 **SEC. 5. DEFINITIONS.**

23 As used in this Act:

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

4 (2) The term “rule” has the meaning given that
5 term in section 551(4) of title 5, United States
6 Code.

7 (3) The term “significant rule” means any
8 agency rulemaking action that is likely to result in
9 a rule that may—

10 (A) have an annual effect on the economy
11 of \$1,000,000 or more or adversely affect in a
12 material way the economy, a sector of the econ-
13 omy, productivity, competition, jobs, the envi-
14 ronment, public health or safety, or State, local,
15 or tribal governments or communities;

16 (B) create a serious inconsistency or other-
17 wise interfere with an action taken or planned
18 by another agency;

19 (C) materially alter the budgetary impact
20 of entitlements, grants, user fees, or loan pro-
21 grams or the rights and obligations of recipi-
22 ents thereof; or

23 (D) raise novel legal or policy issues aris-
24 ing out of legal mandates, the priorities of the
25 President, or the regulatory principles set forth

1 in any relevant Executive order or related policy
2 directive.

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act shall take effect 90 days after the date of
5 the enactment of this Act.

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