

104TH CONGRESS
1ST SESSION

H. R. 926

To promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 1995

Mr. GEKAS (for himself and Mr. HYDE) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To promote regulatory flexibility and enhance public participation in Federal agency rulemaking and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Regulatory Reform
5 and Relief Act”.

6 **TITLE I—STRENGTHENING**
7 **REGULATORY FLEXIBILITY**

8 **SEC. 101. JUDICIAL REVIEW.**

9 (a) AMENDMENT.—Section 611 of title 5, United
10 States Code, is amended to read as follows:

1 **“§ 611. Judicial review**

2 “(a)(1) Except as provided in paragraph (2), not
3 later than 180 days after the effective date of a final rule
4 with respect to which an agency—

5 “(A) certified, pursuant to section 605(b), that
6 such rule would not have a significant economic im-
7 pact on a substantial number of small entities; or

8 “(B) prepared a final regulatory flexibility anal-
9 ysis pursuant to section 604,

10 an affected small entity may petition for the judicial re-
11 view of such certification or analysis in accordance with
12 the terms of this subsection. A court having jurisdiction
13 to review such rule for compliance with the provisions of
14 section 553 or under any other provision of law shall have
15 jurisdiction to review such certification or analysis.

16 “(2)(A) Except as provided in subparagraph (B), in
17 the case where a provision of law requires that an action
18 challenging a final agency regulation be commenced before
19 the expiration of the 180 day period provided in paragraph
20 (1), such lesser period shall apply to a petition for the
21 judicial review under this subsection.

22 “(B) In the case where an agency delays the issuance
23 of a final regulatory flexibility analysis pursuant to section
24 608(b), a petition for judicial review under this subsection
25 shall be filed not later than—

26 “(i) 180 days; or

1 “(ii) in the case where a provision of law re-
2 quires that an action challenging a final agency reg-
3 ulation be commenced before the expiration of the
4 180-day period provided in paragraph (1), the num-
5 ber of days specified in such provision of law,
6 after the date the analysis is made available to the public.

7 “(3) For purposes of this subsection, the term ‘af-
8 fected small entity’ means a small entity that is or will
9 be adversely affected by the final rule.

10 “(4) Nothing in this subsection shall be construed to
11 affect the authority of any court to stay the effective date
12 of any rule or provision thereof under any other provision
13 of law.

14 “(5)(A) In the case where the agency certified that
15 such rule would not have a significant economic impact
16 on a substantial number of small entities, the court may
17 order the agency to prepare a final regulatory flexibility
18 analysis pursuant to section 604 if the court determines,
19 on the basis of the rulemaking record, that the certifi-
20 cation was arbitrary, capricious, an abuse of discretion,
21 or otherwise not in accordance with law.

22 “(B) In the case where the agency prepared a final
23 regulatory flexibility analysis, the court may order the
24 agency to take corrective action consistent with the re-
25 quirements of section 604 if the court determines, on the

1 basis of the rulemaking record, that the final regulatory
2 flexibility analysis was prepared by the agency without ob-
3 servance of procedure required by section 604.

4 “(6) If, by the end of the 90-day period beginning
5 on the date of the order of the court pursuant to para-
6 graph (5) (or such longer period as the court may pro-
7 vide), the agency fails, as appropriate—

8 “(A) to prepare the analysis required by section
9 604; or

10 “(B) to take corrective action consistent with
11 the requirements of section 604,

12 the court may stay the rule or grant such other relief as
13 it deems appropriate.

14 “(7) In making any determination or granting any
15 relief authorized by this subsection, the court shall take
16 due account of the rule of prejudicial error.

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

22 “(c) Nothing in this section bars judicial review of
23 any other impact statement or similar analysis required
24 by any other law if judicial review of such statement or
25 analysis is otherwise provided by law.”.

1 (b) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall apply only to final agency rules issued
3 after the date of enactment of this Act.

4 **SEC. 102. RULES COMMENTED ON BY SBA CHIEF COUNSEL**
5 **FOR ADVOCACY.**

6 (a) IN GENERAL.—Section 612 of title 5, United
7 States Code, is amended by adding at the end the follow-
8 ing new subsection:

9 “(d) ACTION BY THE SBA CHIEF COUNSEL FOR AD-
10 VOCACY.—

11 “(1) TRANSMITTAL OF PROPOSED RULES AND
12 INITIAL REGULATORY FLEXIBILITY ANALYSIS TO
13 SBA CHIEF COUNSEL FOR ADVOCACY.—On or before
14 the 30th day preceding the date of publication by an
15 agency of general notice of proposed rulemaking for
16 a rule, the agency shall transmit to the Chief Coun-
17 sel for Advocacy of the Small Business Administra-
18 tion—

19 “(A) a copy of the proposed rule; and

20 “(B)(i) a copy of the initial regulatory
21 flexibility analysis for the rule if required under
22 section 603; or

23 “(ii) a determination by the agency that an
24 initial regulatory flexibility analysis is not re-

1 case brought in a court of the United States for the pur-
2 pose of reviewing a rule.

3 **TITLE II—REGULATORY IMPACT**
4 **ANALYSES**

5 **SEC. 201. DEFINITIONS.**

6 Section 551 of title 5, United States Code, is amend-
7 ed by striking “and” at the end of paragraph (13), by
8 striking the period at the end of paragraph (14) and in-
9 serting a semicolon, and by adding at the end the follow-
10 ing:

11 “(15) “major rule” means any rule subject to
12 section 553(c) that is likely to result in—

13 “(A) an annual affect on the economy of
14 \$50,000,000 or more;

15 “(B) a major increase in costs or prices for
16 consumers, individual industries, Federal,
17 State, or local government agencies, or geo-
18 graphic regions, or

19 “(C) significant adverse effects on competi-
20 tion, employment, investment, productivity, in-
21 novation, or on the ability of United States-
22 based enterprises to compete with foreign-based
23 enterprises in domestic and export markets; and

24 “(16) ‘Director’ means the Director of the Of-
25 fice of Management and Budget.”

1 **SEC. 202. RULEMAKING NOTICES FOR MAJOR RULES.**

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

4 “(f)(1) Each agency shall for a proposed major rule
5 publish in the Federal Register, at least 90 days before
6 the date of publication of the general notice required
7 under subsection (b), a notice of intent to engage in rule-
8 making.

9 “(2) A notice under paragraph (1) for a proposed
10 major rule shall include, to the extent possible, the infor-
11 mation required to be included in a regulatory impact
12 analysis for the rule under subsection (i)(4)(B) and (D).

13 “(3) For a major rule proposed by an agency, the
14 head of the agency shall include in a general notice under
15 subsection (b), a preliminary regulatory impact analysis
16 for the rule prepared in accordance with subsection (i).

17 “(4) For a final major rule, the agency shall include
18 with the statement of basis and purpose—

19 “(A) a final regulatory impact analysis of the
20 rule in accordance with subsection (i); and

21 “(B) a clear delineation of all changes in the in-
22 formation included in the final regulatory impact
23 analysis under subsection (i) from any such informa-
24 tion that was included in the notice for the rule
25 under subsection (b).”.

1 **SEC. 203. HEARING REQUIREMENT FOR PROPOSED RULES;**
2 **AND EXTENSION OF COMMENT PERIOD.**

3 (a) HEARING REQUIREMENT.—Section 553 of title 5,
4 United States Code, as amended by section 202, is further
5 amended by adding after subsection (f) the following:

6 “(g) If more than 100 interested persons acting indi-
7 vidually submit requests for a hearing to an agency re-
8 garding any rule proposed by the agency, the agency shall
9 hold such a hearing on the proposed rule.”.

10 (b) EXTENSION OF COMMENT PERIOD.—Section 553
11 of title 5, United States Code, as amended by subsection
12 (a), is further amended by adding after subsection (g) the
13 following:

14 “(h) If during the 90-day period beginning on the
15 date of publication of a notice under subsection (f) for a
16 proposed major rule, or if during the period beginning on
17 the date of publication or service of notice required by sub-
18 section (b) for a proposed rule, more than 100 persons
19 individually contact the agency to request an extension of
20 the period for making submissions under subsection (c)
21 pursuant to the notice, the agency—

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

24 “(2) may not adopt the rule until after the ad-
25 ditional period.”.

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

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

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

5 “(2) Each agency shall publish in the Federal Reg-
6 ister, with each rule published under section 552(a)(1)(D),
7 responses to the substance of the comments received by
8 the agency regarding the rule.”.

9 **SEC. 204. REGULATORY IMPACT ANALYSIS.**

10 Section 553 of title 5, United States Code, as amend-
11 ed by section 203, is amended by adding after subsection
12 (h) the following:

13 “(i)(1) Each agency shall, in connection with every
14 major rule, prepare, and, to the extent permitted by law,
15 consider, a regulatory impact analysis. Such analysis may
16 be combined with any regulatory flexibility analysis per-
17 formed under sections 603 and 604.

18 “(2) Each agency shall initially determine whether a
19 rule it intends to propose or issue is a major rule. The
20 Director shall have authority to order a rule to be treated
21 as a major rule and to require any set of related rules
22 to be considered together as a major rule.

23 “(3) Except as provided in subsection (j), agencies
24 shall prepare—

1 “(A) a preliminary regulatory impact analysis,
2 which shall be transmitted, along with a notice of
3 proposed rulemaking, to the Director at least 60-
4 days prior to the publication of notice of proposed
5 rulemaking, and

6 “(B) a final regulatory impact analysis, which
7 shall be transmitted along with the final rule at least
8 30 days prior to the publication of a major rule.

9 “(4) Each preliminary and final regulatory impact
10 analysis shall contain the following information:

11 “(A) A description of the potential benefits of
12 the rule, including any beneficial effects that cannot
13 be quantified in monetary terms and the identifica-
14 tion of those likely to receive the benefits.

15 “(B) An explanation of the necessity, legal au-
16 thority, and reasonableness of the rule and a de-
17 scription of the condition that the rule is to address.

18 “(C) A description of the potential costs of the
19 rule, including any adverse effects that cannot be
20 quantified in monetary terms, and the identification
21 of those likely to bear the costs.

22 “(D) An analysis of alternative approaches, in-
23 cluding market based mechanisms, that could sub-
24 stantially achieve the same regulatory goal at a
25 lower cost and an explanation of the reasons why

1 such alternative approaches were not adopted, to-
2 gether with a demonstration that the rule provides
3 for the least costly approach.

4 “(E) A statement that the rule does not conflict
5 with, or duplicate, any other rule or a statement of
6 the reasons why such a conflict or duplication exists.

7 “(F) A statement of whether the rule will re-
8 quire on-sight inspections or whether persons will be
9 required by the rule to maintain any records which
10 will be subject to inspection.

11 “(G) An estimate of the costs to the agency for
12 implementation and enforcement of the rule and of
13 whether the agency can be reasonably expected to
14 implement the rule with the current level of appro-
15 priations.

16 “(5)(A) the Director is authorized to review any pre-
17 liminary or final regulatory impact analysis, notice of pro-
18 posed rulemaking, or final rule based on the requirements
19 of this subsection.

20 “(B) Upon the request of the Director, an agency
21 shall consult with the Director concerning the review of
22 a preliminary impact analysis or notice of proposed rule-
23 making and shall refrain from publishing its preliminary
24 regulatory impact analysis or notice of proposed rule-
25 making until such review is concluded.

1 “(6)(A) An agency may not adopt a major rule unless
2 the final regulatory impact analysis for the rule is ap-
3 proved or commented upon in writing by the Director or
4 by an individual designated by the Director for that pur-
5 pose.

6 “(B) Upon receiving notice that the Director intends
7 to comment in writing with respect to any final regulatory
8 impact analysis or final rule, the agency shall refrain from
9 publishing its final regulatory impact analysis or final rule
10 until the agency has responded to the Director’s comments
11 and incorporated those comments in the agency’s response
12 in the rulemaking file.”.

13 **SEC. 205. STANDARD OF CLARITY.**

14 Section 553 of title 5, United States Code, as amend-
15 ed in section 204, is amended by adding after subsection
16 (i) the following:

17 “(j) To the extent practicable, the head of an agency
18 shall seek to ensure that any proposed major rule or regu-
19 latory impact analysis of such a rule is written in a reason-
20 ably simple and understandable manner and provides ade-
21 quate notice of the content of the rule to affected per-
22 sons.”.

1 **SEC. 206. EXEMPTIONS.**

2 Section 553 of title 5, United States Code, as amend-
3 ed by section 205, is further amended by adding after sub-
4 section (j) the following:

5 “(k)(1) The provisions of this section regarding
6 major rules shall not apply to—

7 “(A) any regulation that responds to an emer-
8 gency situation if such regulation is reported to the
9 Director as soon as is practicable; and

10 “(B) any regulation for which consideration
11 under the procedures of this section would conflict
12 with deadlines imposed by statute or by judicial
13 order.

14 A regulation described in subparagraph (B) shall be re-
15 ported to the Director with a brief explanation of the con-
16 flict and the agency, in consultation with the Director,
17 shall, to the extent permitted by statutory or judicial dead-
18 lines, adhere to the process of this section.

19 “(2) The Director may in accordance with the pur-
20 poses of this section exempt any class or category of regu-
21 lations from any or all requirements of this section.”.

22 **SEC. 207. REPORT.**

23 The Director of the Office of Management and Budg-
24 et shall submit a report to the Congress no later than 24
25 months after the date of the enactment of this Act con-
26 taining an analysis of rulemaking procedures of Federal

1 agencies and an analysis of the impact of those rule-
2 making procedures on the regulated public and regulatory
3 process.

4 **TITLE III—PROTECTIONS**

5 **SEC. 301. PRESIDENTIAL ACTION.**

6 Pursuant to the authority of section 7301 of title 5,
7 United States Code, the President shall, within 180 days
8 of the date of the enactment of this title, prescribe regula-
9 tions for employees of the executive branch to ensure that
10 Federal laws and regulations shall be administered con-
11 sistent with the principle that any person shall, in connec-
12 tion with the enforcement of such laws and regulations—

13 (1) be protected from abuse, reprisal, or retalia-
14 tion, and

15 (2) be treated fairly, equitably, and with due re-
16 gard for such person's rights under the Constitution.

○