

105TH CONGRESS
2D SESSION

S. 2161

To provide Government-wide accounting of regulatory costs and benefits,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 11, 1998

Mr. THOMPSON (for himself and Mr. BREAUX) introduced the following bill;
which was read twice and referred to the Committee on Governmental Affairs

A BILL

To provide Government-wide accounting of regulatory costs
and benefits, 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 Right-to-
5 Know Act of 1998”.

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are to—

8 (1) promote the public right-to-know about the
9 costs and benefits of Federal regulatory programs
10 and rules;

- 1 (2) improve the quality of Federal regulatory
2 programs and rules;
- 3 (3) increase Government accountability; and
- 4 (4) encourage open communication among Fed-
5 eral agencies, the public, the President, and Con-
6 gress regarding regulatory priorities.

7 **SEC. 3. DEFINITIONS.**

8 In this Act:

9 (1) AGENCY.—The term “agency” means any
10 executive department, military department, Govern-
11 ment corporation, Government controlled corpora-
12 tion, or other establishment in the executive branch
13 of the Government (including the Executive Office of
14 the President), or any independent regulatory agen-
15 cy, but shall not include—

16 (A) the General Accounting Office;

17 (B) the Federal Election Commission;

18 (C) the governments of the District of Co-
19 lumbia and of the territories and possessions of
20 the United States, and their various subdivi-
21 sions; or

22 (D) Government-owned contractor-oper-
23 ated facilities, including laboratories engaged in
24 national defense research and production activi-
25 ties.

1 (2) BENEFIT.—The term “benefit” means the
2 reasonably identifiable significant favorable effects,
3 quantifiable and nonquantifiable, including social,
4 health, safety, environmental, economic, and dis-
5 tributional effects, that are expected to result from
6 implementation of, or compliance with, a rule.

7 (3) COST.—The term “cost” means the reason-
8 ably identifiable significant adverse effects, quantifi-
9 able and nonquantifiable, including social, health,
10 safety, environmental, economic, and distributional
11 effects, that are expected to result from implementa-
12 tion of, or compliance with, a rule.

13 (4) DIRECTOR.—The term “Director” means
14 the Director of the Office of Management and Budg-
15 et, acting through the Administrator of the Office of
16 Information and Regulatory Affairs.

17 (5) MAJOR RULE.—The term “major rule”
18 means a rule that—

19 (A) the agency proposing the rule or the
20 Director reasonably determines is likely to have
21 an annual effect on the economy of
22 \$100,000,000 or more in reasonably quantifi-
23 able costs; or

24 (B) is otherwise designated a major rule by
25 the Director on the ground that the rule is like-

1 ly to adversely affect, in a material way, the
 2 economy, a sector of the economy, including
 3 small business, productivity, competition, jobs,
 4 the environment, public health or safety, or
 5 State, local, or tribal governments, or commu-
 6 nities.

7 (6) PROGRAM ELEMENT.—The term “program
 8 element” means a rule or related set of rules.

9 (7) RULE.—The term “rule” has the same
 10 meaning given such term in section 551(4) of title
 11 5, United States Code, except that such term shall
 12 not include—

13 (A) administrative actions governed by sec-
 14 tions 556 and 557 of title 5, United States
 15 Code;

16 (B) rules issued with respect to a military
 17 or foreign affairs function of the United States;
 18 or

19 (C) rules related to agency organization,
 20 management, or personnel.

21 **SEC. 4. ACCOUNTING STATEMENT.**

22 (a) IN GENERAL.—

23 (1) ADMINISTRATION.—The President, acting
 24 through the Director, shall be responsible for imple-

1 menting and administering the requirements of this
2 Act.

3 (2) ACCOUNTING STATEMENT.—Not later than
4 January 2000, and each January every 2 years
5 thereafter, the President shall prepare and submit to
6 Congress an accounting statement that estimates the
7 costs and corresponding benefits of Federal regu-
8 latory programs and program elements in accord-
9 ance with this section.

10 (b) YEARS COVERED BY ACCOUNTING STATE-
11 MENT.—Each accounting statement (other than the initial
12 accounting statement) submitted under this Act shall
13 cover, at a minimum, the costs and corresponding benefits
14 for each of the 5 fiscal years preceding October 1 of the
15 year in which the report is submitted. Each statement
16 shall also contain, at a minimum, a projection of the costs
17 and corresponding benefits for each of the next 10 fiscal
18 years, based on rules in effect or projected to take effect.
19 The statement may cover any fiscal year preceding such
20 fiscal years for the purpose of revising previous estimates.

21 (c) TIMING AND PROCEDURES.—

22 (1) NOTICE AND COMMENT.—The President
23 shall provide notice and opportunity for comment,
24 including consultation with the Comptroller General
25 of the United States, for each accounting statement.

1 (2) TIMING.—The President shall propose the
2 first accounting statement under this section no
3 later than 1 year after the date of enactment of this
4 Act. Such statement shall cover, at a minimum, each
5 of the preceding fiscal years beginning with fiscal
6 year 1997.

7 (d) CONTENTS OF ACCOUNTING STATEMENT.—

8 (1) ESTIMATES OF COSTS.—An accounting
9 statement shall estimate the costs of all Federal reg-
10 ulatory programs and program elements, including
11 paperwork costs, by setting forth, for each year cov-
12 ered by the statement—

13 (A) the annual expenditure of national eco-
14 nomic resources for each regulatory program
15 and program elements; and

16 (B) such other quantitative and qualitative
17 measures of costs as the President considers
18 appropriate.

19 (2) ESTIMATES OF BENEFITS.—An accounting
20 statement shall estimate the corresponding benefits
21 of Federal regulatory programs and program ele-
22 ments by setting forth, for each year covered by the
23 statement, such quantitative and qualitative meas-
24 ures of benefits as the President considers appro-
25 priate. Any estimates of benefits concerning reduc-

tion in health, safety, or environmental risks shall be based on sound and objective scientific practices and shall present the most plausible level of risk practical, along with a statement of the reasonable degree of scientific certainty.

(3) PRESENTATION OF RESULTS.—

(A) COSTS AND BENEFITS CATEGORIES.—

To the extent feasible, the costs and benefits under this subsection shall be listed under the following categories:

(i) In the aggregate.

(ii) By agency, agency program, and program element.

(iii) By major rule.

(B) QUANTIFICATION.—To the extent feasible, the Director shall quantify the net benefits or net costs under subparagraph (A).

(C) COST ESTIMATES.—In presenting estimates of costs in the accounting statement, the Director shall provide estimates for the following sectors:

(i) Private sector costs.

(ii) Federal sector administrative costs.

(iii) Federal sector compliance costs.

1 (iv) State and local government ad-
 2 ministrative costs.

3 (v) State and local government com-
 4 pliance costs.

5 **SEC. 5. ASSOCIATED REPORT TO CONGRESS.**

6 (a) IN GENERAL.—

7 (1) SUBMISSION.—In each year following the
 8 year in which the President submits an accounting
 9 statement under section 4, the President, acting
 10 through the Director, shall, after notice and oppor-
 11 tunity for comment, submit to Congress a report as-
 12 sociated with the accounting statement (hereinafter
 13 referred to as an “associated report”).

14 (2) CONTENT.—The associated report shall
 15 contain, in accordance with this section—

16 (A) analyses of impacts;

17 (B) identification and analysis of jurisdic-
 18 tional overlaps, duplications, and potential in-
 19 consistencies among Federal regulatory pro-
 20 grams; and

21 (C) recommendations for reform.

22 (b) ANALYSES OF IMPACTS.—The President shall in-
 23 clude in the associated report the following:

24 (1) ANALYSES.—Analyses prepared by the
 25 president of the cumulative impact of Federal regu-

latory programs covered in the accounting statement. Factors to be considered in such report shall include impacts on the following:

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

(B) Small business.

(C) Productivity.

(D) Wages.

(E) Economic growth.

(F) Technological innovation.

(G) Employment and income distribution.

(H) Consumer prices for goods and services.

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

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

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

(1) PRESIDENTIAL RECOMMENDATIONS.—A summary of recommendations of the President for reform or elimination of any Federal regulatory pro-

1 gram or program element that does not represent
2 sound use of national economic resources or other-
3 wise is inefficient.

4 (2) RECOMMENDATIONS FROM COMMENTERS.—

5 A summary of any recommendations for such reform
6 or elimination of Federal regulatory programs or
7 program elements prepared by persons commenting
8 during the comment period on the accounting state-
9 ment.

10 **SEC. 6. GUIDANCE FROM OFFICE OF MANAGEMENT AND**
11 **BUDGET.**

12 (a) IN GENERAL.—Not later than 180 days after the
13 date of enactment of this Act, the Director shall, in con-
14 sultation with the Council of Economic Advisers, issue
15 guidelines to agencies—

16 (1) to standardize measures of costs and bene-
17 fits in accounting statements prepared pursuant to
18 this Act, including guidance on estimating the costs
19 and corresponding benefits of regulatory programs
20 and program elements; and

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

23 (b) REVIEW.—The Director shall review submissions
24 from agencies to assure consistency with the guidelines
25 under this section.

1 **SEC. 7. PEER REVIEW.**

2 (a) IN GENERAL.—

3 (1) SCOPE.—The Director shall provide for
4 independent and external peer review of—

5 (A) the guidelines issued under section 6;

6 and

7 (B) each accounting statement and associ-
8 ated report.

9 (2) USE OF COMMENTS.—The Director shall
10 use the peer review comments in preparing the final
11 statement and report.

12 (b) REVIEW.—Peer review under subsection (a)
13 shall—

14 (1) involve participants who—

15 (A) have expertise in the economic and
16 technical issues germane to regulatory account-
17 ing and economic and scientific analysis; and

18 (B) are independent of the Government;

19 (2) be completed in a timely manner, consistent
20 with applicable deadlines;

21 (3) provide written comments to the Director
22 containing a balanced presentation of all consider-
23 ations; and

24 (4) not be subject to the Federal Advisory Com-
25 mittee Act (5 U.S.C. App.).

1 (c) RESPONSE.—The Director shall provide a written
2 response to all significant peer review comments. Such
3 comments and responses shall be made available to the
4 public.

5 **SEC. 8. RECOMMENDATIONS FROM CONGRESSIONAL BUDG-**
6 **ET OFFICE.**

7 After each accounting statement and associated re-
8 port is submitted to Congress, the Director of the Con-
9 gressional Budget Office shall make recommendations to
10 the President—

11 (1) for improving agency compliance with this
12 Act and the guidelines under section 6; and

13 (2) for improving accounting statements and
14 associated reports prepared under this Act, including
15 recommendations on level of detail, accuracy, and
16 quality of analysis.

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