

114TH CONGRESS
2D SESSION

S. 2570

To amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analyses for certain rules and consideration of the least burdensome regulatory alternative, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2016

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analyses for certain rules and consideration of the least burdensome regulatory alternative, 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 “Unfunded Mandates
5 Accountability Act of 2016”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) The public has a right to know the benefits
2 and costs of regulation. Effective regulatory pro-
3 grams provide important benefits to the public, in-
4 cluding protecting the environment, worker safety,
5 and human health. Regulations also impose signifi-
6 cant costs on individuals, employers, and State,
7 local, and tribal governments, diverting resources
8 from other important priorities.

9 (2) Better regulatory analysis and review
10 should improve the quality of agency decisions, in-
11 creasing the benefits and reducing unwarranted
12 costs of regulation.

13 (3) Disclosure and scrutiny of key information
14 underlying agency decisions should make the Fed-
15 eral Government more accountable to the public it
16 serves.

17 **SEC. 3. REGULATORY IMPACT ANALYSES FOR CERTAIN**
18 **RULES.**

19 (a) REGULATORY IMPACT ANALYSES FOR CERTAIN
20 RULES.—Section 202 of the Unfunded Mandates Reform
21 Act of 1995 (2 U.S.C. 1532) is amended—

22 (1) by striking the section heading and insert-
23 ing the following:

1 **“SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN**
 2 **RULES.”;**

3 (2) by redesignating subsections (b) and (c) as
 4 subsections (d) and (e), respectively;

5 (3) by striking subsection (a) and inserting the
 6 following:

7 “(a) DEFINITION.—In this section, the term ‘cost’
 8 means the cost of compliance and any reasonably foresee-
 9 able indirect costs, including revenues lost as a result of
 10 an agency rule subject to this section.

11 “(b) IN GENERAL.—

12 “(1) REGULATORY IMPACT ANALYSIS RE-
 13 QUIRED.—Before promulgating any proposed or
 14 final rule that may have an annual effect on the
 15 economy of \$100,000,000 or more (adjusted for in-
 16 flation), or that may result in the expenditure by
 17 State, local, and tribal governments, in the aggre-
 18 gate, of \$100,000,000 or more (adjusted for infla-
 19 tion) in any 1 year, each agency shall prepare and
 20 publish in the Federal Register an initial and final
 21 regulatory impact analysis.

22 “(2) INITIAL REGULATORY IMPACT ANALYSIS.—
 23 The initial regulatory impact analysis required under
 24 paragraph (1) shall—

25 “(A) accompany the notice of proposed
 26 rulemaking; and

1 “(B) be open to public comment.

2 “(3) FINAL REGULATORY IMPACT ANALYSIS.—

3 The final regulatory impact analysis required under
4 paragraph (1) shall accompany the final rule.

5 “(c) CONTENT.—The initial and final regulatory im-
6 pact analysis under subsection (b) shall include—

7 “(1)(A) an analysis of the anticipated benefits
8 and costs of the rule, which shall be quantified to
9 the extent feasible;

10 “(B) an analysis of the benefits and costs of a
11 reasonable number of regulatory alternatives within
12 the range of the agency’s discretion under the stat-
13 ute authorizing the rule, including alternatives
14 that—

15 “(i) require no action by the Federal Gov-
16 ernment; and

17 “(ii)(I) use incentives and market-based
18 means to encourage the desired behavior;

19 “(II) provide information based upon
20 which the public can make choices; or

21 “(III) employ other flexible regulatory op-
22 tions that permit the greatest flexibility in
23 achieving the objectives of the statute author-
24 izing the rule; and

1 “(C) an explanation of how the rule complies
2 with the requirements of section 205;

3 “(2) an assessment of the extent to which—

4 “(A) the costs to State, local, and tribal
5 governments may be paid with Federal financial
6 assistance (or otherwise paid for by the Federal
7 Government); and

8 “(B) Federal resources are available to
9 carry out the rule;

10 “(3) estimates of—

11 “(A) any disproportionate budgetary ef-
12 fects of the rule upon any particular—

13 “(i) regions of the United States;

14 “(ii) State, local, or tribal govern-
15 ments;

16 “(iii) types of communities, including
17 urban or rural communities; or

18 “(iv) segments of the private sector;
19 and

20 “(B) the effect of the rule on job creation
21 or job loss, which shall be quantified to the ex-
22 tent feasible; and

23 “(4)(A) a description of the extent of the agen-
24 cy’s prior consultation under section 204 with elect-

1 ed representatives of each affected State, local, or
 2 tribal government;

3 “(B) a summary of the comments and concerns
 4 that were presented to the agency orally or in writ-
 5 ing by State, local, or tribal governments; and

6 “(C) a summary of the agency’s evaluation of
 7 the comments and concerns described in subpara-
 8 graph (B).”;

9 (4) in subsection (d), as redesignated, by strik-
 10 ing “subsection (a)” and inserting “subsection (b)”;
 11 and

12 (5) in subsection (e), as redesignated, by strik-
 13 ing “subsection (a)” each place that term appears
 14 and inserting “subsection (b)”.

15 (b) TECHNICAL AND CONFORMING AMENDMENT.—
 16 The table of sections for the Unfunded Mandates Reform
 17 Act of 1995 is amended by striking the item relating to
 18 section 202 and inserting the following:

“Sec. 202. Regulatory impact analyses for certain rules.”.

19 **SEC. 4. LEAST BURDENSOME OPTION OR EXPLANATION RE-**
 20 **QUIRED.**

21 Title II of the Unfunded Mandates Reform Act of
 22 1995 is amended by striking section 205 (2 U.S.C. 1535)
 23 and inserting the following:

1 **“SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION**
 2 **REQUIRED.**

3 “Before promulgating any proposed or final rule for
 4 which a regulatory impact analysis is required under sec-
 5 tion 202, the agency shall—

6 “(1) identify and consider a reasonable number
 7 of regulatory alternatives within the range of the
 8 agency’s discretion under the statute authorizing the
 9 rule, including alternatives required under section
 10 202(c)(1)(B); and

11 “(2) from the alternatives described under
 12 paragraph (1), select the least costly, most cost-ef-
 13 fective, or least burdensome alternative that achieves
 14 the objectives of the statute.”.

15 **SEC. 5. INCLUSION OF APPLICATION TO INDEPENDENT**
 16 **REGULATORY AGENCIES.**

17 (a) IN GENERAL.—Section 421(1) of the Congres-
 18 sional Budget and Impoundment Control Act of 1974 (2
 19 U.S.C. 658(1)) is amended by striking “, but does not in-
 20 clude independent regulatory agencies”.

21 (b) EXEMPTION FOR MONETARY POLICY.—The Un-
 22 funded Mandates Reform Act of 1995 (2 U.S.C. 1501 et
 23 seq.) is amended by inserting after section 5 the following:

24 **“SEC. 6. EXEMPTION FOR MONETARY POLICY.**

25 “Nothing in title II, III, or IV shall apply to rules
 26 that concern monetary policy proposed or implemented by

1 the Board of Governors of the Federal Reserve System
 2 or the Federal Open Market Committee.”.

3 **SEC. 6. JUDICIAL REVIEW.**

4 Title IV of the Unfunded Mandates Reform Act of
 5 1995 is amended by striking section 401 (2 U.S.C. 1571)
 6 and inserting the following:

7 **“SEC. 401. JUDICIAL REVIEW.**

8 “(a) IN GENERAL.—For a rule that is subject to sec-
 9 tion 202, a person aggrieved by final agency action in
 10 adopting the rule is entitled to judicial review of the agen-
 11 cy’s compliance with section 202(b), 202(c)(1), or 205
 12 with respect to the rule.

13 “(b) SCOPE OF REVIEW.—Chapter 7 of title 5,
 14 United States Code, shall govern the scope of judicial re-
 15 view under subsection (a).

16 “(c) JURISDICTION.—Each court that has jurisdic-
 17 tion to review a rule for compliance with section 553 of
 18 title 5, United States Code, or under any other provision
 19 of law, shall have jurisdiction to review a claim brought
 20 under subsection (a) of this section.

21 “(d) RELIEF AVAILABLE.—In granting relief in an
 22 action under this section, the court shall order the agency
 23 to take remedial action consistent with chapter 7 of title
 24 5, United States Code, including remand and vacatur.”.

1 **SEC. 7. EFFECTIVE DATE.**

2 This Act shall take effect 90 days after the date of
3 enactment of this Act.

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