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H. R. 3311

To provide for analysis of major rules, to promote the public's right to know the costs and benefits of major rules, and to increase the accountability and quality of Government.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 10, 1999

Mr. GEKAS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To provide for analysis of major rules, to promote the public's right to know the costs and benefits of major rules, and to increase the accountability and quality of Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Regulatory Improvement Act of 2000''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Effective regulatory programs provide important benefits to the public, including protecting the environment, worker safety, and public health. Regulatory programs also impose significant costs on individuals, businesses, and State, local, and tribal governments.

(2) Improving the ability of Federal agencies to use scientific and economic analysis in developing regulations should yield more effective protections while minimizing costs.

(3) Cost-benefit analysis and risk assessment are useful tools to better inform agencies in developing regulations, though such analyses do not replace good judgment and values.

(4) The evaluation of costs and benefits should involve all relevant information, expressed in comparable terms.

(5) Cost-benefit analysis and risk assessment should be presented with a clear statement of the analytical assumptions and uncertainties, including an explanation of what is known and not known and what the implications of alternative assumptions might be.

(6) The public has a right to know about the costs and benefits of regulations, the risks ad-

dressed, the risks reduced, and the quality of scientific and economic analysis used to support decisions. Such knowledge will promote the quality, integrity, responsiveness, and acceptability of agency actions.

(7) The Administrator of the Office of Information and Regulatory Affairs should oversee regulatory activities to raise the quality and consistency of cost-benefit analysis and risk assessment among all agencies.

(8) The Federal Government should develop a better understanding of the strengths and weaknesses of cost-benefit analysis and risk assessment and conduct the research needed to improve these analytical tools.

SEC. 3. REGULATORY IMPACT ANALYSIS.

(a) IN GENERAL.—Chapter 6 of title 5, United States Code, is amended by adding at the end the following:

"SUBCHAPTER II—REGULATORY IMPACT ANALYSIS

"§ 621. Definitions

"For purposes of this subchapter the definitions under section 551 shall apply and—

"(1) the term 'benefit' means a reasonably identifiable favorable effect, which may include social, health, safety, environmental, and economic effects;

"(2) the term 'cost' means a reasonably identifiable adverse effect, which may include social, health, safety, environmental, and economic, effects;

"(3) the term 'cost-benefit analysis' means a comparison of the costs and benefits, quantified to the extent possible, that are expected to result from the implementation of a rule;

"(4) the term 'Director' means the Director of the Office of Management and Budget, acting through the Administrator of the Office of Information and Regulatory Affairs;

"(5) the term 'major rule' means a rule that—

"(A) may have an effect on the economy of $100 million or more;

"(B) may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments, or communities; or

"(C) is so designated by the Director not later than 30 days after the close of the com-

ment period for a rule or the publication of a direct final rule, such designation being published, together with a succinct statement of the basis for the designation, within 30 days after the date of the designation.

''(6) the term 'quantified' means measured and expressed in numerical and, as necessary, comparable terms.

''(7) the term 'regulatory impact analysis' means—

''(A) a cost-benefit analysis of a rule;

''(B) cost-benefit analyses of a reasonable number of alternative rules reflecting the range of options that would comply with the statute granting rule making authority, including where feasible rules that—

''(i) require no government action;

''(ii) utilize only voluntary or educational programs;

''(iii) provide flexibility for small entities as defined in section 601(6); and

''(iv) use market-based mechanisms, results-oriented performance-based standards, or other options that promote flexibility for regulated persons and for State,

local, or tribal governments delegated authority to administer a Federal program; and

"(C) if the primary purpose of the rule is to address health, safety, or environmental risks—

"(i) a risk assessment of the proposed rule; and

"(ii) an evaluation of any substitution risk relating to the proposed rule;

"(8) the term 'risk assessment' means the systematic, objective process of organizing hazard and exposure information, based on a careful analysis of the weight of the scientific evidence, to estimate the potential for specific harm to an exposed population or resource, including, to the extent feasible, a characterization of the distribution of risk as well as an analysis of uncertainties, variabilities, conflicting information, inferences, and assumptions and includes—

"(A) an identification of the hazard addressed by the rule, including data on the harm addressed by the rule and the conditions that produce it;

"(B) an identification of the populations or natural resources that are subject to the hazard addressed by the rule;

"(C) an assessment of the quantitative relation between the amount of exposure to the agent or activity addressed by the rule and the extent of the harms addressed by the rule;

"(D) an assessment of exposure, including a description of the nature and size of the populations or resources exposed to an agent or activity addressed by the rule and the magnitude and duration of their exposure;

"(E) an integration of the information from subparagraphs (A) through (D) to determine the reasonable likelihood that a population or resource will experience the harms addressed by the rule; and

"(F) a description of the major uncertainties in each component of the risk assessment and their influence on the results of the risk assessment; and

"(9) the term 'substitution risk' means an identifiable risk of harm to health, safety, or the environment expected to result from the implementation of a rule.

"§ 622. Regulatory impact analysis

''(a)(1) When an agency publishes a notice of proposed rule making for a major rule, the agency shall—

''(A) prepare and place in the rule making file an initial regulatory impact analysis; and

''(B) include a summary of such analysis in the notice of proposed rule making.

''(2) When the Director has designated a rule a major rule under section 621(5)(C) or when the agency has published an interim final major rule, the agency shall—

''(A) promptly prepare and place in the rule making file an initial regulatory impact analysis for the rule;

''(B) publish in the Federal Register a summary of such analysis; and

''(C) give interested parties the same opportunity to comment under section 553 as if the initial regulatory impact analysis had been issued with the notice of proposed rule making.

''(b) When the agency publishes a final major rule, or at the conclusion of the comment period required by subsection (a)(2)(C), the agency shall prepare and place in the rule making file a final regulatory impact analysis which shall address each of the requirements of the initial regulatory impact analysis required by subsection (a)(1)(A) or (a)(2)(A) revised to reflect—

"(1) any material changes made to the proposed rule by the agency after publication of the notice of proposed rule making;

"(2) any material changes made to the cost-benefit analysis or risk assessment; and

"(3) agency consideration of significant comments received regarding the proposed rule and the initial regulatory impact analysis.".

SEC. 4. RISK BASED PRIORITIES STUDY.

(a) STUDY.—Not later than 1 year after the date of enactment of this Act, the Director of the Office of Management and Budget, in consultation with the Director of the Office of Science and Technology Policy, shall enter into a contract with an accredited scientific institution to conduct a study that provides—

(1) a systematic comparison of the extent and severity of significant risks to human health, safety, or the environment (hereafter referred to as a comparative risk analysis);

(2) a study of methodologies for using comparative risk analysis to compare dissimilar risks to human health, safety, or the environment, including development of a common basis to assist comparative risk analysis related to both carcinogens and noncarcinogens; and

(3) recommendations on the use of comparative risk analysis in setting priorities for the reduction of risks to human health, safety, or the environment.

(b) The Director shall ensure that the study required under subsection (a) is—

(1) conducted through an open process providing opportunities for public comment and participation; and

(2) not later than 3 years after the date of enactment of this Act, completed and submitted to Congress and the President.

(c) Not later than 4 years after the date of enactment of this Act, each relevant agency shall, as appropriate, use the results of the study required under subsection (a) to inform the agency in the preparation of the agency's annual budget and strategic plan and performance plan under section 306 of title 5, United States Code, and sections 1115, 1116, 1117, 1118, and 1119 of title 31, United States Code.

(d) Not later than 5 years after the date of enactment of this Act, and periodically thereafter, the President shall submit a report to Congress recommending legislative changes to assist in setting priorities to more effectively and efficiently reduce risks to human health, safety, or the environment.

SEC. 5. TECHNICAL AND CONFORMING AMENDMENTS.

(a) SUBCHAPTER HEADING.—Chapter 6 of title 5, United States Code, is amended by inserting before section 601 the following:

"SUBCHAPTER I—ANALYSIS OF REGULATORY FLEXIBILITY".

(b) TABLE OF SECTIONS.—The table of sections for chapter 6 of title 5, United States Code, is amended—

(1) by inserting before the reference to section 601 the following:

"SUBCHAPTER I—ANALYSIS OF REGULATORY FLEXIBILITY";

and

(2) by adding at the end the following:

"SUBCHAPTER II—REGULATORY IMPACT ANALYSIS

"621. Definitions.
"622. Regulatory impact analysis.".

(c) CONFORMING AMENDMENTS.—Subchapter I of chapter 6 of title 5, United States Code, is amended by striking "this chapter" each place it occurs and inserting "this subchapter".

SEC. 6. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act shall take effect 180 days after the date of enactment of this Act, but shall not apply to any agency rule for which

1 a notice of proposed rule making is published on or before
2 60 days before the date of enactment of this Act.

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