

112TH CONGRESS
1ST SESSION

S. 1189

To amend the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) to provide for regulatory impact analyses for certain rules, consideration of the least burdensome regulatory alternative, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

Mr. PORTMAN (for himself, Mr. CORNYN, Mr. CRAPO, Mr. ENZI, Mr. HATCH, Mr. RISCH, and Mr. TOOMEY) 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 (2 U.S.C. 1501 et seq.) to provide for regulatory impact analyses for certain rules, 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 2011”.

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, State, local,
7 and tribal governments, diverting resources from
8 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 Govern-
15 ment more accountable to the public it serves.

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

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

21 (1) by striking the section heading and insert-
22 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.—Before promulgating any pro-
12 posed or final rule that may have an annual effect on the
13 economy of \$100,000,000 or more (adjusted for inflation),
14 or that may result in the expenditure by State, local, and
15 tribal governments, in the aggregate, of \$100,000,000 or
16 more (adjusted for inflation) in any 1 year, each agency
17 shall prepare and publish in the Federal Register an initial
18 and final regulatory impact analysis. The initial regulatory
19 impact analysis shall accompany the agency’s notice of
20 proposed rulemaking and shall be open to public comment.
21 The final regulatory impact analysis shall accompany the
22 final rule.

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

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

4 “(B) an analysis of the benefits and costs of a
5 reasonable number of regulatory alternatives within
6 the range of the agency’s discretion under the stat-
7 ute authorizing the rule, including alternatives
8 that—

9 “(i) require no action by the Federal Gov-
10 ernment; and

11 “(ii) use incentives and market-based
12 means to encourage the desired behavior, pro-
13 vide information upon which choices can be
14 made by the public, or employ other flexible
15 regulatory options that permit the greatest
16 flexibility in achieving the objectives of the stat-
17 utory provision authorizing the rule; and

18 “(C) an explanation that the rule meets the re-
19 quirements of section 205;

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

21 “(A) the costs to State, local and tribal
22 governments may be paid with Federal financial
23 assistance (or otherwise paid for by the Federal
24 Government); and

1 “(B) there are available Federal resources
2 to carry out the rule;

3 “(3) estimates of—

4 “(A) any disproportionate budgetary ef-
5 fects of the rule upon any particular regions of
6 the Nation or particular State, local, or tribal
7 governments, urban or rural or other types of
8 communities, or particular segments of the pri-
9 vate sector; and

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

13 “(4)(A) a description of the extent of the agen-
14 cy’s prior consultation with elected representatives
15 (under section 204) of the affected State, local, and
16 tribal governments;

17 “(B) a summary of the comments and concerns
18 that were presented by State, local, or tribal govern-
19 ments either orally or in writing to the agency; and

20 “(C) a summary of the agency’s evaluation of
21 those comments and concerns.”;

22 (4) in subsection (d) (as redesignated by para-
23 graph (2) of this subsection), by striking “subsection
24 (a)” and inserting “subsection (b)”; and

1 (5) in subsection (e) (as redesignated by para-
 2 graph (2) of this subsection), by striking “subsection
 3 (a)” each place that term appears and inserting
 4 “subsection (b)”.

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

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

9 **SEC. 4. LEAST BURDENSOME OPTION OR EXPLANATION RE-**
 10 **QUIRED.**

11 Section 205 of the Unfunded Mandates Reform Act
 12 of 1995 (2 U.S.C. 1535) is amended by striking section
 13 205 and inserting the following:

14 **“SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION**
 15 **REQUIRED.**

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

19 “(1) identify and consider a reasonable number
 20 of regulatory alternatives within the range of the
 21 agency’s discretion under the statute authorizing the
 22 rule, including alternatives required under section
 23 202(b)(1)(B); and

24 “(2) from the alternatives described under
 25 paragraph (1), select the least costly, most cost-ef-

1 fective, or least burdensome alternative that achieves
2 the objectives of the statute.”.

3 **SEC. 5. INCLUSION OF APPLICATION TO INDEPENDENT**
4 **REGULATORY AGENCIES.**

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

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

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

13 “Nothing in title II, III, or IV shall apply to rules
14 that concern monetary policy proposed or implemented by
15 the Board of Governors of the Federal Reserve System
16 or the Federal Open Market Committee.”.

17 **SEC. 6. JUDICIAL REVIEW.**

18 The Unfunded Mandates Reform Act of 1995 is
19 amended by striking section 401 (2 U.S.C. 1571) and in-
20 serting the following:

21 **“SEC. 401. JUDICIAL REVIEW.**

22 “(a) IN GENERAL.—For any rule subject to section
23 202, a party aggrieved by final agency action is entitled
24 to judicial review of an agency’s analysis under and com-
25 pliance with sections 202 (b) and (c)(1) and 205. The

1 scope of review shall be governed by chapter 7 of title 5,
2 United States Code.

3 “(b) JURISDICTION.—Each court having jurisdiction
4 to review a rule subject to section 202 for compliance with
5 section 553 of title 5, United States Code, or under any
6 other provision of law, shall have jurisdiction to review any
7 claims brought under subsection (a) of this section.

8 “(c) RELIEF AVAILABLE.—In granting relief in an
9 action under this section, the court shall order the agency
10 to take remedial action consistent with chapter 7 of title
11 5, United States Code, including remand and vacatur of
12 the rule.”.

13 **SEC. 7. EFFECTIVE DATE.**

14 This Act shall take effect 90 days after the date of
15 enactment of this Act.

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