

116TH CONGRESS
1ST SESSION

S. 870

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

MARCH 26, 2019

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”.

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 Section 202 of the Unfunded Mandates Reform Act
20 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) REGULATORY IMPACT ANALYSES.—

12 “(1) REQUIREMENT.—Before promulgating any
13 proposed or final rule that may have an annual ef-
14 fect on the economy of \$100,000,000 or more (ad-
15 justed for inflation), or that may result in the ex-
16 penditure by State, local, and tribal governments, in
17 the aggregate, of \$100,000,000 or more (adjusted
18 for inflation) in any 1 year, the agency promulgating
19 the rule shall prepare and publish in the Federal
20 Register an initial and final regulatory impact anal-
21 ysis with respect to the rule.

22 “(2) INITIAL REGULATORY IMPACT ANALYSIS.—

23 An initial regulatory impact analysis required under
24 paragraph (1) shall—

1 “(A) accompany the notice of proposed
2 rulemaking with respect to the rule that is the
3 subject of the analysis; and

4 “(B) be open to public comment.

5 “(3) FINAL REGULATORY IMPACT ANALYSIS.—

6 A final regulatory impact analysis required under
7 paragraph (1) shall accompany the final rule that is
8 the subject of the analysis.

9 “(c) CONTENT.—Each initial and final regulatory im-
10 pact analysis prepared and published under subsection (b)
11 shall include, with respect to the rule that is the subject
12 of the analysis—

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

16 “(B) an analysis of the benefits and costs of a
17 reasonable number of regulatory alternatives within
18 the range of the discretion of the agency under the
19 statute authorizing the rule, including alternatives
20 that—

21 “(i) require no action by the Federal Gov-
22 ernment; and

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

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

3 “(III) employ other flexible regulatory op-
4 tions that permit the greatest flexibility in
5 achieving the objectives of the statute author-
6 izing the rule; and

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

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

10 “(A) the costs to State, local, and tribal
11 governments may be paid with Federal financial
12 assistance (or otherwise paid for by the Federal
13 Government); and

14 “(B) Federal resources are available to
15 carry out the rule;

16 “(3) estimates of—

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

19 “(i) regions of the United States;

20 “(ii) State, local, or tribal govern-
21 ments;

22 “(iii) types of communities, including
23 urban or rural communities; or

24 “(iv) segments of the private sector;
25 and

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

4 “(4)(A) a description of the extent of the prior
5 consultation of the agency under section 204 with
6 elected representatives of each affected State, local,
7 or tribal government;

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

11 “(C) a summary of the evaluation by the agen-
12 cy of the comments and concerns described in sub-
13 paragraph (B).”;

14 (4) in subsection (d), as so redesignated, by
15 striking “a statement under subsection (a) is re-
16 quired, the agency shall include in the promulgation
17 a summary of the information contained in the
18 statement” and inserting “an analysis under sub-
19 section (b) is required, the agency promulgating the
20 rule shall include in the promulgation a summary of
21 the information contained in the analysis”; and

22 (5) in subsection (e), as so redesignated, by
23 striking “any statement required under subsection
24 (a) in conjunction with or as a part of any other
25 statement or analysis, provided that the statement

1 or analysis satisfies the provisions of subsection (a)”
2 and inserting “any analysis required under sub-
3 section (b) in conjunction with, or as a part of, any
4 other statement or analysis if the other statement or
5 analysis satisfies the requirements of subsections (b)
6 and (c)”.

7 **SEC. 4. LEAST BURDENSOME OPTION OR EXPLANATION RE-**
8 **QUIRED.**

9 Title II of the Unfunded Mandates Reform Act of
10 1995 (2 U.S.C. 1531 et seq.) is amended by striking sec-
11 tion 205 (2 U.S.C. 1535) and inserting the following:

12 **“SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION**
13 **REQUIRED.**

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

17 “(1) identify and consider a reasonable number
18 of regulatory alternatives within the range of the
19 discretion of the agency under the statute author-
20 izing the rule, including the alternatives described in
21 section 202(c)(1)(B); and

22 “(2) from the alternatives identified and consid-
23 ered under paragraph (1), select the least costly,
24 most cost-effective, or least burdensome alternative
25 that achieves the objectives of the statute.”.

1 **SEC. 5. INCLUSION OF APPLICATION TO INDEPENDENT**
2 **REGULATORY AGENCIES.**

3 (a) IN GENERAL.—Section 421(1) of the Congres-
4 sional Budget Act of 1974 (2 U.S.C. 658(1)) is amended
5 by striking “, but does not include independent regulatory
6 agencies”.

7 (b) EXEMPTION FOR MONETARY POLICY.—The Un-
8 funded Mandates Reform Act of 1995 (2 U.S.C. 1501 et
9 seq.) is amended by inserting after section 5 the following:
10 **“SEC. 6. EXEMPTION FOR MONETARY POLICY.**

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

15 **SEC. 6. JUDICIAL REVIEW.**

16 Title IV of the Unfunded Mandates Reform Act of
17 1995 is amended by striking section 401 (2 U.S.C. 1571)
18 and inserting the following:

19 **“SEC. 401. JUDICIAL REVIEW.**

20 “(a) IN GENERAL.—A person that is aggrieved by
21 final agency action in adopting a rule that is subject to
22 section 202 is entitled to judicial review of whether the
23 agency complied with section 202(b), 202(c)(1), or 205
24 with respect to the rule.

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

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

9 “(d) RELIEF AVAILABLE.—In granting relief in an
10 action under this section, a court shall order the agency
11 that promulgated the rule that is under review to take re-
12 medial action consistent with chapter 7 of title 5, United
13 States Code.”.

14 **SEC. 7. EFFECTIVE DATE.**

15 This Act shall take effect on the date that is 90 days
16 after the date of enactment of this Act.

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