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113TH CONGRESS
2D SESSION

S. 2931

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

NOVEMBER 17, 2014

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

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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.

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 ''Unfunded Mandates Accountability Act of 2014''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The public has a right to know the benefits and costs of regulation. Effective regulatory programs provide important benefits to the public, including protecting the environment, worker safety, and human health. Regulations also impose significant costs on individuals, employers, and State, local, and tribal governments, diverting resources from other important priorities.

(2) Better regulatory analysis and review should improve the quality of agency decisions, increasing the benefits and reducing unwarranted costs of regulation.

(3) Disclosure and scrutiny of key information underlying agency decisions should make the Federal Government more accountable to the public it serves.

SEC. 3. REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.

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

(1) by striking the section heading and inserting the following:

"SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.";

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

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

"(a) DEFINITION.—In this section, the term 'cost' means the cost of compliance and any reasonably foreseeable indirect costs, including revenues lost as a result of an agency rule subject to this section.

"(b) IN GENERAL.—

"(1) REGULATORY IMPACT ANALYSIS REQUIRED.—Before promulgating any proposed or final rule that may have an annual effect on the economy of $100,000,000 or more (adjusted for inflation), or that may result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more (adjusted for inflation) in any 1 year, each agency shall prepare and publish in the Federal Register an initial and final regulatory impact analysis.

"(2) INITIAL REGULATORY IMPACT ANALYSIS.—The initial regulatory impact analysis required under paragraph (1) shall—

"(A) accompany the notice of proposed rulemaking; and

"(B) be open to public comment.

"(3) FINAL REGULATORY IMPACT ANALYSIS.—The final regulatory impact analysis required under paragraph (1) shall accompany the final rule.

"(c) CONTENT.—The initial and final regulatory impact analysis under subsection (b) shall include—

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

"(B) an analysis of the benefits and costs of a reasonable number of regulatory alternatives within the range of the agency's discretion under the statute authorizing the rule, including alternatives that—

"(i) require no action by the Federal Government; and

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

"(II) provide information based upon which the public can make choices; or

"(III) employ other flexible regulatory options that permit the greatest flexibility in achieving the objectives of the statute authorizing the rule; and

"(C) an explanation of how the rule complies with the requirements of section 205;

"(2) an assessment of the extent to which—

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

"(B) Federal resources are available to carry out the rule;

"(3) estimates of—

"(A) any disproportionate budgetary effects of the rule upon any particular—

"(i) regions of the United States;

"(ii) State, local, or tribal governments;

"(iii) types of communities, including urban or rural communities; or

"(iv) segments of the private sector; and

"(B) the effect of the rule on job creation or job loss, which shall be quantified to the extent feasible; and

"(4)(A) a description of the extent of the agency's prior consultation under section 204 with elect-

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

"(B) a summary of the comments and concerns that were presented to the agency orally or in writing by State, local, or tribal governments; and

"(C) a summary of the agency's evaluation of the comments and concerns described in subparagraph (B).";

(4) in subsection (d), as redesignated, by striking "subsection (a)" and inserting "subsection (b)"; and

(5) in subsection (e), as redesignated, by striking "subsection (a)" each place that term appears and inserting "subsection (b)".

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

"Sec. 202. Regulatory impact analyses for certain rules.".

SEC. 4. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

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

"SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

"Before promulgating any proposed or final rule for which a regulatory impact analysis is required under section 202, the agency shall—

"(1) identify and consider a reasonable number of regulatory alternatives within the range of the agency's discretion under the statute authorizing the rule, including alternatives required under section 202(c)(1)(B); and

"(2) from the alternatives described under paragraph (1), select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the statute.".

SEC. 5. INCLUSION OF APPLICATION TO INDEPENDENT REGULATORY AGENCIES.

(a) IN GENERAL.—Section 421(1) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658(1)) is amended by striking ", but does not include independent regulatory agencies".

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

"SEC. 6. EXEMPTION FOR MONETARY POLICY.

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

the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.''.

SEC. 6. JUDICIAL REVIEW.

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

''SEC. 401. JUDICIAL REVIEW.

''(a) IN GENERAL.—For a rule that is subject to section 202, a person aggrieved by final agency action in adopting the rule is entitled to judicial review of the agency's compliance with section 202(b), 202(c)(1), or 205 with respect to the rule.

''(b) SCOPE OF REVIEW.—Chapter 7 of title 5, United States Code, shall govern the scope of judicial review under subsection (a).

''(c) JURISDICTION.—Each court that has jurisdiction to review a rule for compliance with section 553 of title 5, United States Code, or under any other provision of law, shall have jurisdiction to review a claim brought under subsection (a) of this section.

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

SEC. 7. EFFECTIVE DATE.

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

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