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S. 358

To codify and modify regulatory requirements of Federal agencies.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 15, 2011

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

A BILL

To codify and modify regulatory requirements of Federal agencies.

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 “Regulatory Responsi-
5 bility for our Economy Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the term “agency” means any authority of
9 the United States that is—

1 (A) an agency as defined under section
2 3502(1) of title 44, United States Code; and

3 (B) shall include an independent regu-
4 latory agency as defined under section 3502(5)
5 of title 44, United States Code;

6 (2) the term “regulation”—

7 (A) means an agency statement of general
8 applicability and future effect, which the agency
9 intends to have the force and effect of law, that
10 is designed to implement, interpret, or prescribe
11 law or policy or to describe the procedure or
12 practice requirements of an agency; and

13 (B) shall not include—

14 (i) regulations issued in accordance
15 with the formal rulemaking provisions of
16 sections 556 and 557 of title 5, United
17 States Code;

18 (ii) regulations that pertain to a mili-
19 tary or foreign affairs function of the
20 United States, other than procurement
21 regulations and regulations involving the
22 import or export of non-defense articles
23 and services; or

1 (iii) regulations that are limited to
2 agency organization, management, or per-
3 sonnel matters;

4 (3) the term “regulatory action” means any
5 substantive action by an agency (normally published
6 in the Federal Register) that promulgates or is ex-
7 pected to lead to the promulgation of a final regula-
8 tion, including notices of inquiry, advance notices of
9 proposed rulemaking, and notices of proposed rule-
10 making; and

11 (4) the term “significant regulatory action”
12 means any regulatory action that is likely to result
13 in a regulation that may—

14 (A) have an annual effect on the economy
15 of \$100,000,000 or more or adversely affect in
16 a material way the economy, a sector of the
17 economy, productivity, competition, jobs, the
18 environment, public health or safety, or State,
19 local, or tribal governments or communities;

20 (B) create a serious inconsistency or other-
21 wise interfere with an action taken or planned
22 by another agency;

23 (C) materially alter the budgetary impact
24 of entitlements, grants, user fees, or loan pro-

1 grams or the rights and obligation of recipients
2 thereof;

3 (D) add to the national debt; or

4 (E) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Act.

7 **SEC. 3. AGENCY REQUIREMENTS.**

8 (a) **FEDERAL REGULATORY SYSTEM.**—The Federal
9 regulatory system shall—

10 (1) protect the public health, welfare, safety,
11 and the environment of the United States, especially
12 those promoting economic growth, innovation, competitiveness, and job creation;

14 (2) be based on the best available science and
15 information;

16 (3) allow for public participation and an open
17 exchange of ideas;

18 (4) promote predictability and reduce uncertainty, including adherence to a clearly articulated
19 timeline for the release of regulatory documents at
20 all stages of the regulatory process;

22 (5) identify and use the best, most innovative,
23 and least burdensome tools for achieving regulatory
24 ends;

1 (6) take into account benefits and costs, both
2 quantitative and qualitative;

3 (7) ensure that regulations are accessible, con-
4 sistent, written in plain language, and easy to under-
5 stand; and

6 (8) measure, and seek to improve, the actual re-
7 sults of regulatory requirements.

8 (b) REQUIREMENTS.—Each agency shall—

9 (1) propose or adopt a regulation only upon a
10 reasoned determination that the benefits of the regu-
11 lation justify the costs of the regulation to the extent
12 permitted by law;

13 (2) tailor regulations of the agency to impose
14 the least burden on society, consistent with obtain-
15 ing regulatory objectives, taking into account, among
16 other things, the costs of cumulative regulations;

17 (3) select, in choosing among alternative regu-
18 latory approaches, those approaches that maximize
19 net benefits, including potential economic, environ-
20 mental, public health and safety, and other advan-
21 tages, distributive impacts, and equity;

22 (4) specify performance objectives, rather than
23 specifying the behavior or manner of compliance
24 that regulated entities are required to adopt;

1 (5) identify and assess available alternatives to
2 direct regulation, including providing economic in-
3 centives to encourage the desired behavior, such as
4 user fees or marketable permits, or providing infor-
5 mation upon which choices can be made by the pub-
6 lic; and

7 (6) use the best available techniques to quantify
8 anticipated present and future benefits and costs.

9 **SEC. 4. PUBLIC PARTICIPATION.**

10 (a) IN GENERAL.—Regulations shall be—

11 (1) adopted through a process that involves
12 public participation; and

13 (2) based, to the extent consistent with law, on
14 the open exchange of information and perspectives
15 among State, local, and tribal officials, experts in
16 relevant disciplines, affected stakeholders in the pri-
17 vate sector, and the public as a whole.

18 (b) OPPORTUNITY TO PARTICIPATE.—Each agency
19 shall—

20 (1) provide the public with an opportunity to
21 participate in the regulatory process;

22 (2) as authorized by law, afford the public a
23 meaningful opportunity to comment through the
24 Internet on any proposed regulation, with a com-
25 ment period that shall begin on the date on which

1 the proposed regulation is published in the Federal
2 Register and be not less than 60 days, unless the
3 relevant regulation is designated by the Adminis-
4 trator of the Office of Information and Regulatory
5 Affairs to be an emergency rule;

6 (3) provide, for both proposed and final rules,
7 timely online access to the rulemaking docket on
8 regulations.gov, including relevant scientific and
9 technical findings, in an open format that can be
10 easily searched and downloaded; and

11 (4) for proposed rules, provide access to in-
12 clude, to the extent permitted by law, an opportunity
13 for public comment on all pertinent parts of the
14 rulemaking docket, including relevant scientific and
15 technical findings.

16 (c) SEEKING AFFECTED PARTIES.—Before issuing a
17 notice of proposed rulemaking, each agency shall, where
18 appropriate, seek the views of those who are likely to be
19 affected, including those who are likely to benefit from and
20 those who are potentially subject to such rulemaking.

21 (d) DELAY OF IMPLEMENTATION.—

22 (1) IN GENERAL.—An agency shall delay imple-
23 mentation of an interim final rule until final dispo-
24 sition of a challenge is entered by a court in the
25 United States, if—

1 (A) the agency excepted the rule from no-
2 tice and public procedure under section
3 553(b)(B) of title 5, United States Code; and

4 (B) the agency exception of the rule de-
5 scribed under paragraph (1) is challenged in a
6 court in the United States.

7 (2) LENGTH OF DELAY.—If implementation of
8 an interim final rule is delayed under paragraph (1),
9 the delay shall continue until a final disposition of
10 the challenge is entered by the court.

11 **SEC. 5. INTEGRATION AND INNOVATION.**

12 (a) FINDINGS.—Congress finds that—

13 (1) some sectors and industries face a signifi-
14 cant number of regulatory requirements, some of
15 which may be redundant, inconsistent, or overlap-
16 ping; and

17 (2) greater coordination across agencies should
18 reduce these requirements, thus reducing costs and
19 simplifying and harmonizing rules.

20 (b) PROMOTION OF INNOVATION.—In developing reg-
21 ulatory actions and identifying appropriate approaches,
22 each agency shall—

23 (1) promote coordination, simplification, and
24 harmonization; and

1 (2) identify means to achieve regulatory goals
2 that are designed to promote innovation.

3 **SEC. 6. FLEXIBLE APPROACHES.**

4 (a) IN GENERAL.—Each agency shall identify and
5 consider regulatory approaches that reduce burdens, espe-
6 cially economic burdens, and maintain flexibility and free-
7 dom of choice for the public.

8 (b) CONTENTS.—The approaches described under
9 subsection (a) shall include warnings, appropriate default
10 rules, disclosure requirements, and the provision of infor-
11 mation to the public in a form that is clear and intelligible.

12 **SEC. 7. SCIENCE.**

13 Each agency shall ensure the objectivity of any sci-
14 entific and technological information and processes used
15 to support the regulatory actions of the agency.

16 **SEC. 8. RETROSPECTIVE ANALYSES OF EXISTING RULES.**

17 (a) RETROSPECTIVE ANALYSES.—

18 (1) IN GENERAL.—To facilitate the periodic re-
19 view of existing significant regulatory actions, agen-
20 cies shall consider how best to promote retrospective
21 analysis of rules that may be outmoded, ineffective,
22 insufficient, or excessively burdensome, and to mod-
23 ify, streamline, expand, or repeal such regulations in
24 accordance with what has been learned.

1 (2) AGREEMENT.—Once every 5 years, each
2 agency may enter into an agreement with a qualified
3 private organization to conduct the retrospective
4 analysis described in paragraph (1) of the agency.

5 (3) PUBLICATION ONLINE.—Any retrospective
6 analyses conducted under this subsection, including
7 supporting data, shall be published online.

8 (b) AGENCY PLANS.—

9 (1) PLAN.—

10 (A) IN GENERAL.—Not later than 180
11 days after the date of enactment of this Act,
12 each agency shall develop and submit to the ap-
13 propriate congressional committees a prelimi-
14 nary plan for reviewing significant regulatory
15 actions issued by the agency, consistent with
16 law, under which the agency shall review its ex-
17 isting significant regulatory actions once every
18 5 years to determine whether such regulations
19 should be modified, streamlined, expanded, or
20 repealed so as to make the regulatory program
21 of the agency more effective or less burdensome
22 in achieving the regulatory objectives.

23 (B) REPEAL.—If the plan described in
24 subparagraph (A) includes suggestions for

1 needed repeals a timeline for such repeals shall
2 also be included in the plan.

3 (2) REPORT.—Upon completion of a review
4 under a plan submitted under paragraph (1), each
5 agency shall submit to the appropriate congressional
6 committees a report that—

7 (A) describes the outcome of the review,
8 including which regulations were modified,
9 streamlined, expanded, or repealed;

10 (B) describes the reasons for the modifica-
11 tions, streamlining, expansions, or repeals de-
12 scribed in subparagraph (A); and

13 (C) in any case where an agency did not
14 take action, describes the reasons why the agen-
15 cy did not take action to modify, streamline, ex-
16 pand, or repeal any significant regulatory ac-
17 tions.

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