113TH CONGRESS
2D SESSION

S. _____

To establish a National Regulatory Budget, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish a National Regulatory Budget, 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 ''National Regulatory Budget Act of 2014''.

SEC. 2. ESTABLISHMENT OF THE OFFICE OF REGULATORY ANALYSIS.

(a) IN GENERAL.—Part I of title 5, United States Code, is amended by inserting after chapter 6 the following:

"CHAPTER 6A—NATIONAL REGULATORY BUDGET AND OFFICE OF REGULATORY ANALYSIS

''Sec.
''613. Definitions.
''614. Office of Regulatory Analysis; establishment; powers.
''615. Functions of Office of Regulatory Analysis; Executive branch agency compliance.
''616. Public disclosure of estimate methodology and data; privacy.
''617. National Regulatory Budget; timeline.
''618. Executive branch agency cooperation mandatory; information sharing.
''619. Enforcement.
''620. Regulatory Analysis Advisory Board.

"§ 613. Definitions

''In this chapter—

''(1) the term 'aggregate costs', with respect to a covered Federal rule, means the sum of—

''(A) the direct costs of the covered Federal rule; and

''(B) the regulatory costs of the covered Federal rule;

''(2) the term 'covered Federal rule' means—

''(A) a rule (as defined in section 551);

''(B) an information collection requirement given a control number by the Office of Management and Budget; or

''(C) guidance or a directive that—

''(i) is not described in subparagraph (A) or (B);

"(ii)(I) is mandatory in its application to regulated entities; or

"(II) represents a statement of agency position that regulated entities would reasonably construe as reflecting the enforcement or litigation position of the agency; and

"(iii) imposes not less than $25,000,000 in annual costs on regulated entities;

"(3) the term 'direct costs' means—

"(A) expenditures made by an Executive branch agency that relate to the promulgation, administration, or enforcement of a covered Federal rule; or

"(B) costs incurred by an Executive branch agency, a Government corporation, the United States Postal Service, or any other instrumentality of the Federal Government because of a covered Federal rule;

"(4) the term 'Director' means the Director of the Office of Regulatory Analysis established under section 614(b);

"(5) the term 'Executive branch agency' means—

"(A) an Executive department (as defined in section 101); and

"(B) an independent establishment (as defined in section 104);

"(6) the term 'regulated entity' means—

"(A) a for-profit private sector entity (including an individual who is in business as a sole proprietor);

"(B) a not-for-profit private sector entity; or

"(C) a State or local government; and

"(7) the term 'regulatory costs' means all costs incurred by a regulated entity because of covered Federal rules.

"§ 614. Office of Regulatory Analysis; establishment; powers

"(a) ESTABLISHMENT.—There is established in the executive branch an independent establishment to be known as the 'Office of Regulatory Analysis'.

"(b) DIRECTOR.—

"(1) ESTABLISHMENT OF POSITION.—There shall be at the head of the Office of Regulatory Analysis a Director, who shall be appointed by the President, by and with the advice and consent of the Senate.

"(2) TERM.—

"(A) IN GENERAL.—The term of office of the Director shall—

"(i) be 4 years; and

"(ii) expire on the last day of February following each Presidential election.

"(B) APPOINTMENTS PRIOR TO EXPIRATION OF TERM.—Subject to subparagraph (C), an individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of the term.

"(C) SERVICE UNTIL APPOINTMENT OF SUCCESSOR.—An individual serving as Director at the expiration of a term may continue to serve until a successor is appointed.

"(3) POWERS.—

"(A) APPOINTMENT OF DEPUTY DIRECTORS, OFFICERS, AND EMPLOYEES.—

"(i) IN GENERAL.—The Director may appoint Deputy Directors, officers, and employees, including attorneys, in accordance with chapter 51 and subchapter III of chapter 53.

"(ii) TERM OF DEPUTY DIRECTORS.—A Deputy Director shall serve until the expiration of the term of office of the Director who appointed the Deputy Director (and until a successor to that Director is appointed), unless sooner removed by the Director.

"(B) CONTRACTING.—

"(i) IN GENERAL.—The Director may contract for financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) with the General Services Administration, or such other Federal agency as the Director determines appropriate, for which payment shall be made in advance, or by reimbursement, from funds of the Office of Regulatory Analysis in such amounts as may be agreed upon by the Director and the head of the Federal agency providing the services.

"(ii) SUBJECT TO APPROPRIATIONS.—Contract authority under clause (i) shall be effective for any fiscal year only to the ex-

tent that appropriations are available for that purpose.

"(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Regulatory Analysis for each fiscal year such sums as may be necessary to enable the Office of Regulatory Analysis to carry out its duties and functions.

"§ 615. Functions of Office of Regulatory Analysis; Executive branch agency compliance

"(a) ANNUAL REPORT REQUIRED.—

"(1) IN GENERAL.—Not later than January 30 of each year, the Director shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Small Business of the House of Representatives a Report on National Regulatory Costs (referred to in this section as the 'Report') that includes the information specified under paragraph (2).

"(2) CONTENTS.—Each Report shall include–

"(A) an estimate, for the fiscal year during which the Report is submitted and for the preceding fiscal year, of—

"(i) the regulatory costs imposed by each Executive branch agency on regulated entities;

"(ii) the aggregate costs imposed by each Executive branch agency;

"(iii) the aggregate costs imposed by all Executive branch agencies combined;

"(iv) the direct costs incurred by the Federal Government because of covered Federal rules issued by each Executive branch agency;

"(v) the sum of the costs described in clauses (iii) and (iv);

"(vi) the regulatory costs imposed by each Executive branch agency on small businesses, small organizations, and small governmental jurisdictions (as those terms are defined in section 601); and

"(vii) the sum of the costs described in clause (vi);

"(B) an analysis of any major changes in estimation methodology used by the Office of Regulatory Analysis since the previous annual report;

"(C) an analysis of any major estimate changes caused by improved or inadequate data since the previous annual report;

"(D) recommendations, both general and specific, regarding—

"(i) how regulations may be streamlined, simplified, and modernized;

"(ii) regulations that should be repealed; and

"(iii) how the Federal Government may reduce the costs of regulations without diminishing the effectiveness of regulations; and

"(E) any other information that the Director determines may be of assistance to Congress in determining the National Regulatory Budget required under section 617.

"(b) REGULATORY ANALYSIS OF NEW RULES.—

"(1) REQUIREMENT.—The Director shall publish in the Federal Register and on the website of the Office of Regulatory Analysis a regulatory analysis of each proposed covered Federal rule issued by an Executive branch agency, and each proposed withdrawal or modification of a covered Federal rule by an Executive branch agency, that—

"(A) imposes costs on a regulated entity; or

"(B) reduces costs imposed on a regulated entity.

"(2) CONTENTS.—Each regulatory analysis published under paragraph (1) shall include—

"(A) an estimate of the change in regulatory cost of each proposed covered Federal rule (or proposed withdrawal or modification of a covered Federal rule); and

"(B) any other information or recommendation that the Director may choose to provide.

"(3) TIMING OF REGULATORY ANALYSIS.—

"(A) INITIAL REGULATORY ANALYSIS.—Not later than 60 days after the date on which the Director receives a copy of a proposed covered Federal rule from the head of an Executive branch agency under paragraph (4), the Director shall publish an initial regulatory analysis.

"(B) REVISED REGULATORY ANALYSIS.—The Director may publish a revised regulatory analysis at any time.

"(4) NOTICE TO DIRECTOR OF PROPOSED COVERED FEDERAL RULE.—The head of an Executive branch agency shall provide a copy of each proposed covered Federal rule to the Director in a manner prescribed by the Director.

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), a covered Federal rule may not take effect earlier than 75 days after the date on which the head of the Executive branch agency proposing the covered Federal rule submits a copy of the proposed covered Federal rule to the Director in the manner prescribed by the Director under subsection (b)(4).

"(2) EXCEPTION.—If the head of the Executive branch agency proposing a covered Federal rule determines that the public health or safety or national security requires that the covered Federal rule be promulgated earlier than the date specified under paragraph (1), the head of the Executive branch agency may promulgate the covered Federal rule without regard to paragraph (1).

"§ 616. Public disclosure of estimate methodology and data; privacy

"(a) PRIVACY.—The Director shall comply with all relevant privacy laws, including—

"(1) the Confidential Information Protection and Statistical Efficiency Act of 2002 (44 U.S.C. 3501 note);

"(2) section 9 of title 13; and

"(3) section 6103 of the Internal Revenue Code of 1986.

"(b) DISCLOSURE.—

"(1) IN GENERAL.—To the maximum extent permitted by law, the Director shall disclose, by publication in the Federal Register and on the website of the Office of Regulatory Analysis, the methodology and data used to generate the estimates in the Report on National Regulatory Costs required under section 615.

"(2) GOAL OF DISCLOSURE.—In disclosing the methodology and data under paragraph (1), the Director shall seek to provide sufficient information so that outside researchers may replicate the results contained in the Report on National Regulatory Costs.

"§ 617. National Regulatory Budget; timeline

"(a) DEFINITION.—In this section—

"(1) the term 'annual overall regulatory cost cap' means the maximum amount of regulatory costs

that all Executive branch agencies combined may impose in a fiscal year;

"(2) the term 'annual agency regulatory cost cap' means the maximum amount of regulatory costs that an Executive branch agency may impose in a fiscal year; and

"(3) the term 'National Regulatory Budget' means an Act of Congress that establishes, for a fiscal year—

"(A) the annual overall regulatory cost cap; and

"(B) an annual agency regulatory cost cap for each Executive branch agency.

"(b) COMMITTEE DEADLINES.—

"(1) REFERRAL.—Not later than March 31 of each year—

"(A) the Committee on Small Business and Entrepreneurship of the Senate shall refer to the Committee on Homeland Security and Governmental Affairs of the Senate a bill that sets forth a National Regulatory Budget for the fiscal year beginning on October 1 of that year; and

"(B) the Committee on Small Business of the House of Representatives shall refer to the

Committee on Oversight and Government Reform of the House of Representatives a bill that sets forth a National Regulatory Budget for the fiscal year beginning on October 1 of that year.

"(2) REPORTING.—Not later than May 31 of each year—

"(A) the Committee on Homeland Security and Governmental Affairs of the Senate shall report a bill establishing a National Regulatory Budget for the fiscal year beginning on October 1 of that year; and

"(B) the Committee on Oversight and Government Reform of the House of Representatives shall report a bill establishing a National Regulatory Budget for the fiscal year beginning on October 1 of that year.

"(c) PASSAGE.—Not later than July 31 of each year, the House of Representatives and the Senate shall each pass a bill establishing a National Regulatory Budget for the fiscal year beginning on October 1 of that year.

"(d) PRESENTMENT.—Not later than September 15 of each year, Congress shall pass and present to the President a National Regulatory Budget for the fiscal year beginning on October 1 of that year.

"(e) DEFAULT BUDGET.—

"(1) IN GENERAL.—If a National Regulatory Budget is not enacted with respect to a fiscal year, the most recently enacted National Regulatory Budget shall apply to that fiscal year.

"(2) DEFAULT INITIAL BUDGET.—

"(A) CALCULATION.—If a National Regulatory Budget is not enacted with respect to a fiscal year, and no National Regulatory Budget has previously been enacted—

"(i) the annual agency regulatory cost cap for an Executive branch agency for the fiscal year shall be equal to the amount of regulatory costs imposed by that Executive branch agency on regulated entities during the preceding fiscal year, as estimated by the Director in the annual report submitted to Congress under section 615(a); and

"(ii) the annual overall regulatory cost cap for the fiscal year shall be equal to the sum of the amounts described in clause (i).

"(B) EFFECT.—For purposes of section 619, an annual agency regulatory cost cap described in subparagraph (A) that applies to a fiscal year shall have the same effect as if the

annual agency regulatory cost cap were part of a National Regulatory Budget applicable to that fiscal year.

"(f) INITIAL BUDGET.—The first National Regulatory Budget shall be with respect to fiscal year 2016.

"§ 618. Executive branch agency cooperation mandatory; information sharing

"(a) EXECUTIVE BRANCH AGENCY COOPERATION MANDATORY.—Not later than 45 days after the date on which the Director requests any information from an Executive branch agency, the Executive branch agency shall provide the Director with the information.

"(b) MEMORANDA OF UNDERSTANDING REGARDING CONFIDENTIALITY.—

"(1) IN GENERAL.—An Executive branch agency may require the Director to enter into a memorandum of understanding regarding the confidentiality of information provided by the Executive branch agency to the Director under subsection (a) as a condition precedent to providing any requested information.

"(2) DEGREE OF CONFIDENTIALITY OR DATA PROTECTION.—An Executive branch agency may not require a greater degree of confidentiality or data protection from the Director in a memorandum of

understanding entered into under paragraph (1) than the Executive branch agency itself must adhere to.

"(3) SCOPE.—A memorandum of understanding entered into by the Director and an Executive branch agency under paragraph (1) shall—

"(A) be general in scope; and

"(B) govern all pending and future requests made to the Executive branch agency by the Director.

"(c) SANCTIONS FOR NON-COOPERATION.—

"(1) IN GENERAL.—The appropriations of an Executive branch agency for a fiscal year shall be reduced by one-half of 1 percent if, during that fiscal year, the Director finds that—

"(A) the Executive branch agency has failed to timely provide information that the Director requested under subsection (a);

"(B) the Director has provided notice of the failure described in subparagraph (A) to the Executive branch agency;

"(C) the Executive branch agency has failed to cure the failure described in subparagraph (A) within 30 days of being notified under subparagraph (B); and

"(D) the information that the Director requested under subsection (a)—

"(i) is in the possession of the Executive branch agency; or

"(ii) may reasonably be developed by the Executive branch agency.

"(2) SEQUESTRATION.—The Office of Management and Budget, in consultation with the Office of Federal Financial Management and Financial Management Service, shall enforce a reduction in appropriations under paragraph (1) by sequestering the appropriate amount of funds and returning the funds to the Treasury.

"(3) APPEALS.—

"(A) IN GENERAL.—The Director of the Office of Management and Budget may reduce the amount of, or except as provided in subparagraph (B), waive, a sanction imposed under paragraph (1) if the Director of the Office of Management and Budget finds that—

"(i) the sanction is unwarranted;

"(ii) the sanction is disproportionate to the gravity of the failure;

"(iii) the failure has been cured; or

"(iv) providing the requested information would adversely affect national security.

"(B) NO WAIVER FOR HISTORICALLY NON-COMPLIANT AGENCIES.—The Director of the Office of Management and Budget may not waive a sanction imposed on an Executive branch agency under paragraph (1) if the Executive branch agency has a history of non-compliance with requests for information by the Director of the Office of Regulatory Analysis under subsection (a).

"(d) NATIONAL SECURITY.—The Director may not require an Executive branch agency to provide information under subsection (a) that would adversely affect national security.

"§ 619. Enforcement

"(a) EXCEEDING ANNUAL AGENCY REGULATORY COST CAP.—An Executive branch agency that exceeds the annual agency regulatory cost cap imposed by the National Regulatory Budget for a fiscal year may not promulgate a new covered Federal rule that increases regulatory costs until the Executive branch agency no longer exceeds the annual agency regulatory cost cap imposed by the applicable National Regulatory Budget.

"(b) DETERMINATION OF DIRECTOR.—

"(1) IN GENERAL.—An Executive branch agency may not promulgate a covered Federal rule unless the Director determines, in conducting the regulatory analysis of the covered Federal rule under section 615(b)(3)(A) that, after the Executive branch agency promulgates the covered Federal rule, the Executive branch agency will not exceed the annual agency regulatory cost cap for that Executive branch agency.

"(2) TIMING.—The Director shall make a determination under paragraph (1) with respect to a proposed covered Federal rule not later than 60 days after the Director receives a copy of the proposed covered Federal rule under section 615(b)(4).

"(c) EFFECT OF VIOLATION OF THIS SECTION.—

"(1) NO FORCE OR EFFECT.—A covered Federal rule that is promulgated in violation of this section shall have no force or effect.

"(2) JUDICIAL ENFORCEMENT.—Any party may bring an action in a district court of the United States to declare that a covered Federal rule has no force or effect because the covered Federal rule was promulgated in violation of this section.

"§ 620. Regulatory Analysis Advisory Board

''(a) ESTABLISHMENT OF BOARD.—In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), the Director shall—

''(1) establish a Regulatory Analysis Advisory Board; and

''(2) appoint not fewer than 9 and not more than 15 individuals as members of the Regulatory Analysis Advisory Board.

''(b) QUALIFICATIONS.—The Director shall appoint individuals with technical and practical expertise in economics, law, accounting, science, management, and other areas that will aid the Director in preparing the annual Report on National Regulatory Costs required under section 615.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TABLE OF CHAPTERS.—The table of chapters for part I of title 5, United States Code, is amended by inserting after the item relating to chapter 6 the following:

''6A. National Regulatory Budget and Office of Regulatory Analysis 613''.

(2) INTERNAL REVENUE CODE OF 1986.—Section 6103(j) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(7) OFFICE OF REGULATORY ANALYSIS.—Upon written request by the Director of the Office

of Regulatory Analysis established under section 614 of title 5, United States Code, the Secretary shall furnish to officers and employees of the Office of Regulatory Analysis return information for the purpose of, but only to the extent necessary for, an analysis of regulatory costs.''.

SEC. 3. REPORT ON DUPLICATIVE PERSONNEL; REPORT ON REGULATORY ANALYSIS.

(a) REPORT ON DUPLICATIVE PERSONNEL.—Not later than December 31, 2014, the Director shall submit to Congress a report determining positions in the Federal Government that are—

(1) duplicative of the work performed by the Office of Regulatory Analysis established under section 614 of title 5, United States Code; or

(2) otherwise rendered cost ineffective by the work of the Office of Regulatory Analysis.

(b) REPORT ON REGULATORY ANALYSIS.—

(1) REPORT REQUIRED.—Not later than June 30, 2015, the Director shall provide to Congress a report analyzing the practice with respect to, and the effectiveness of—

(A) chapter 6 of this title (commonly known as the ''Regulatory Flexibility Act'');

(B) the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note);

(C) chapter 35 of title 44 (commonly known as the ''Paperwork Reduction Act'';

(D) each Executive Order that mandates economic analysis of Federal regulations; and

(E) Office of Management and Budget circulars, directives, and memoranda that mandate the economic analysis of Federal regulation.

(2) RECOMMENDATIONS.—The report under paragraph (1) shall include recommendations about how Federal regulatory analysis may be improved.

SEC. 4. ADMINISTRATIVE PROCEDURE.

(a) DEFINITION OF ''RULE''.—Section 551(4) of title 5, United States Code, is amended by inserting after ''requirements of an agency'' the following: '', whether or not the agency statement amends the Code of Federal Regulations and including, without limitation, a statement described by the agency as a regulation, rule, directive, or guidance,''.

(b) NOTICE OF PROPOSED RULEMAKING.—Section 553(b) of title 5, United States Code, is amended, following the flush text, in subparagraph (A) by striking ''interpretative rules, general statements of policy, or''.