

113TH CONGRESS  
2D SESSION

# H. R. 3863

To amend title 5, United States Code, to establish uniform requirements for thorough economic analysis of regulations by Federal agencies based on sound principles, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

JANUARY 14, 2014

Mr. BRADY of Texas introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To amend title 5, United States Code, to establish uniform requirements for thorough economic analysis of regulations by Federal agencies based on sound principles, 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 “Sound Regulation Act  
5 of 2014”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1           (1) Growing Federal regulation that is highly  
2 prescriptive in nature burdens American industry  
3 and impairs its international competitiveness.

4           (2) Prescriptive regulation takes away flexi-  
5 bility, is adversarial in nature, leads to unintended  
6 consequences, and, especially as it proliferates, slows  
7 economic growth and job creation.

8           (3) Despite evidence of increasing regulatory  
9 costs, Federal agencies hold fast to the presumption  
10 that their rules are in the public interest.

11           (4) Some statutes prohibit consideration of  
12 costs and benefits in rulemaking, although none pro-  
13 hibit agency analysis of costs and benefits for in-  
14 formative purposes.

15           (5) For independent regulatory agencies cost-  
16 benefit analysis is not institutionalized. Executive  
17 agencies perform cost-benefit analysis pursuant to  
18 Executive order and under the purview of the Office  
19 of Information and Regulatory Affairs (OIRA),  
20 which takes direction from the President. No peer  
21 review is required of analyses by either set of agen-  
22 cies.

23           (6) There are no statutory standards for cost-  
24 benefit analysis in Federal rulemaking and there are

1 no consistent, material consequences when rules are  
2 based on faulty or inadequate analysis.

3 (7) Agencies conduct their own regulatory im-  
4 pact analyses largely by methods of their own choos-  
5 ing and only on a small fraction of the rules they  
6 issue. Agencies use regulatory cost-benefit analysis  
7 mainly in support of favored, preconceived rules  
8 rather than as a decision tool. Common deficiencies  
9 include—

10 (A) lack of a coherent theory by which to  
11 define a problem, determine why it occurs, and  
12 guide the agency to the most efficient response;

13 (B) lack of objective evidence that an ac-  
14 tionable problem actually exists, what its di-  
15 mensions are, and how they differ from accept-  
16 able norms;

17 (C) lack of comprehensive analysis to de-  
18 termine whether a market malfunction exists  
19 and orient rulemaking to its causes, not its  
20 symptoms;

21 (D) failure to set clear and realistic objec-  
22 tives whose benefits justify the cost of achieving  
23 them;

24 (E) objectives that are set disconnected  
25 from costs and may be expansive and vague so

1 that any regulation can be made to appear ben-  
2 efficient;

3 (F) agencies increasingly claiming inci-  
4 dental benefits (so-called co-benefits) that are  
5 not in furtherance of the stated objective and  
6 even private (as opposed to public) benefits for  
7 their rules;

8 (G) failure to develop regulatory options in  
9 light of market analysis and rank them by how  
10 efficiently they will improve the market process;

11 (H) inconsistent assumptions and meth-  
12 odologies across agencies;

13 (I) invalid baselines for gauging regulatory  
14 effects;

15 (J) omissions of important impacts, such  
16 as on employment and international competi-  
17 tiveness of U.S. firms;

18 (K) failure to reevaluate regulations after  
19 implementation; and

20 (L) failure to consider the cumulative costs  
21 of regulation by the various Federal, State,  
22 local, and tribal agencies.

23 (8) Despite continually changing market condi-  
24 tions, agencies do not regularly review their existing  
25 regulations and regulatory regimes. They also do not

1 review the division of functions among different Fed-  
2 eral agencies or among Federal, State, local, and  
3 tribal agencies. Regulations lose their purpose, yet  
4 linger and accumulate, imposing unnecessary costs  
5 and slowing economic growth to the detriment of  
6 material living standards and, to some extent, the  
7 very social conditions that are the objects of regula-  
8 tion.

9 (9) Agencies typically do not conduct regulatory  
10 cost studies proactively and report to Congress un-  
11 necessary costs that are not under the agencies' con-  
12 trol because of the way laws are written. Agency rec-  
13 ommendations on how to improve the efficiency of  
14 regulation by modifying an existing statute could be  
15 helpful to Congress.

16 **SEC. 3. UNIFORM USE OF COST-BENEFIT ANALYSIS.**

17 Section 553 of title 5, United States Code, is amend-  
18 ed by adding at the end the following:

19 “(f)(1) Prior to any rulemaking under this section,  
20 an agency shall comply with the following:

21 “(A) The agency shall identify, in the con-  
22 text of a coherent conceptual framework and  
23 supported with objective data—

24 “(i) the nature and significance of the  
25 market failure, regulatory failure, or other

1 problem that necessitates regulatory ac-  
2 tion;

3 “(ii) the reasons why national eco-  
4 nomic and income growth, advancing tech-  
5 nology, and other market developments will  
6 not obviate the need for the rulemaking;

7 “(iii) the reasons why regulation at  
8 the State, local, or tribal level could not  
9 address the problem better than at the  
10 Federal level;

11 “(iv) the reasons why reducing rather  
12 than increasing the extent or stringency of  
13 existing Federal regulation would not ad-  
14 dress the problem better; and

15 “(v) the particular authority by which  
16 the agency may take action.

17 “(B) Before the agency increases the ex-  
18 tent or stringency of regulation based on its de-  
19 terminations pursuant to subparagraph (A), it  
20 shall—

21 “(i) set an achievable objective for its  
22 regulatory action and identify the metrics  
23 by which the agency will measure progress  
24 toward the objective;

1           “(ii) issue a notice of inquiry seeking  
2           public comment on the identification of a  
3           new objective under clause (i); and

4           “(iii) give notice to the committees of  
5           Congress with jurisdiction over the subject  
6           matter of the rule.

7           “(C) The agency, if the agency is not seek-  
8           ing to repeal a rule, shall develop at least 3 dis-  
9           tinct regulatory options, in addition to not regu-  
10          lating, that the agency estimates will provide  
11          the greatest benefits for the least cost in meet-  
12          ing the regulatory objective set under subpara-  
13          graph (B) and, in developing such regulatory  
14          options, shall apply the following principles:

15                  “(i) The agency shall assume that in-  
16                  dividuals are rational and not qualify that  
17                  assumption unless the agency—

18                                  “(I) has conclusive evidence of a  
19                                  detrimental systematic behavioral  
20                                  bias; and

21                                  “(II) can devise behavioral regu-  
22                                  latory options that do not preclude  
23                                  any choices of market participants.

24                  “(ii) The agency shall, to the extent  
25                  practicable, attempt to engage private in-

1 centives to solve a problem and not sup-  
2 plant private incentives any more than nec-  
3 essary.

4 “(iii) The agency shall consider the  
5 adverse effects that mandates and prohibi-  
6 tions may have on innovation, economic  
7 growth, and employment.

8 “(iv) An agency’s risk assessment  
9 shall be confined to its jurisdiction, subject  
10 to specific regulatory authority. Agency as-  
11 sessments of the risks of adverse health  
12 and environmental effects shall follow  
13 standardized parameters, assumptions, and  
14 methodologies. An agency also shall pro-  
15 vide analyses of increases in risks, what-  
16 ever their nature, produced by the regu-  
17 latory options under consideration.

18 “(v) The agency shall avoid incongru-  
19 ities and duplication in regulation at the  
20 Federal, State, local, and tribal levels.

21 “(vi) The agency shall compare and  
22 contrast the regulatory options developed  
23 and explain how each would meet the regu-  
24 latory objective set pursuant to subpara-  
25 graph (B).



1           “(D) The agency shall estimate the costs  
2 and benefits of each regulatory option devel-  
3 oped, notwithstanding any provision of law that  
4 prohibits the agency from using costs in rule-  
5 making, at least to the extent that the agency  
6 is able to—

7                   “(i) exclude options whose costs ex-  
8 ceed their benefits;

9                   “(ii) rank the options by cost from  
10 lowest to highest;

11                   “(iii) estimate the monetary cost of  
12 any adverse effects on private property  
13 rights, identify the categories of persons  
14 who experience a net loss from a regu-  
15 latory option, and explain why the negative  
16 effects cannot be lessened or avoided;

17                   “(iv) establish whether the cost of an  
18 option exceeds \$50,000,000 for any 12-  
19 month period, except that the dollar  
20 amount shall be adjusted annually for in-  
21 flation based on the GDP deflator, and the  
22 President may order that a lower dollar  
23 amount be used for a particular period;  
24 and

1 “(v) identify the key uncertainties and  
2 assumptions that drive the results and pro-  
3 vide an analysis of how the ranking of the  
4 options and the threshold determination  
5 under clause (iv) may change if key as-  
6 sumptions are changed.

7 “(E) The estimates pursuant to subpara-  
8 graph (D) shall—

9 “(i) follow the methodology estab-  
10 lished pursuant to paragraph (2)(A);

11 “(ii) to the maximum extent prac-  
12 ticable, comply with any guidelines issued  
13 by the Administrator of the Office of Infor-  
14 mation and Regulatory Affairs pertaining  
15 to cost-benefit analysis; and

16 “(iii) include, at a minimum—

17 “(I) agency administrative costs;

18 “(II) United States private sector  
19 compliance costs;

20 “(III) Federal, State, local, and  
21 tribal compliance costs;

22 “(IV) Federal, State, local, and  
23 tribal revenue impacts;

24 “(V) impacts from the regulatory  
25 options developed on United States in-

1 dustries in the role of suppliers and  
2 consumers to each industry substan-  
3 tially affected, especially in terms of  
4 employment, costs, volume and quality  
5 of output, and prices;

6 “(VI) nationwide impacts on  
7 overall economic output, productivity,  
8 consumer and producer prices;

9 “(VII) international competitive-  
10 ness of United States companies; and

11 “(VIII) distortions in incentives  
12 and markets, including an estimate of  
13 the resulting loss to the United States  
14 economy.

15 “(F) The agency shall publish for public  
16 comment all analyses, documentation, and data  
17 under subparagraphs (A) through (D) for a  
18 public comment period of at least 30 days (sub-  
19 ject to applicable limitations under law, includ-  
20 ing laws protecting privacy, trade secrets, and  
21 intellectual property) and correct deficiencies or  
22 omissions that the agency becomes aware of be-  
23 fore choosing a rule to propose.

24 “(2)(A) Beginning not later than the date that  
25 is 180 days after the effective date of this section—

1           “(i) each agency shall, by rule, estab-  
2           lish and maintain the specific cost-benefit  
3           analysis methodology appropriate to the  
4           functions and responsibilities of that agen-  
5           cy and establish an appropriate period for  
6           review of new rules to assess the cost effec-  
7           tiveness of each such new rule at achieving  
8           the objective identified under paragraph  
9           (1)(B)(i) the new rule was intended to ad-  
10          dress;

11           “(ii) the methodology so established  
12          shall—

13                   “(I) include the standardized pa-  
14                   rameters, assumptions, and meth-  
15                   odologies for agency assessments of  
16                   risk under paragraph (1)(C)(iv);

17                   “(II) comply, to the maximum  
18                   extent practicable, with technical  
19                   standards for methodologies and as-  
20                   sumptions issued by the Adminis-  
21                   trator for the Office of Information  
22                   and Regulatory Affairs;

23                   “(III) include the scope of bene-  
24                   fits and costs consistent with the  
25                   framework used and the metrics iden-

1           tified in the establishment of the regu-  
2           latory objective under paragraph (1);

3           “(IV) not include consideration  
4           of incidental benefits but only those  
5           benefits that were considered in the  
6           establishment of the regulatory objec-  
7           tive;

8           “(V) limit consideration of costs  
9           and benefits to costs and benefits that  
10          accrue to the population of the United  
11          States;

12          “(VI) constrain the agency from  
13          presuming that continued augmenta-  
14          tion or tightening of mandates and  
15          additional prohibitions cause benefits  
16          and costs to change linearly but deter-  
17          mine at what point benefits will rise  
18          less than, and costs will rise more  
19          than, proportionally;

20          “(VII) include comparison of in-  
21          cremental benefits to incremental  
22          costs from any action the agency con-  
23          siders taking and refrain from actions  
24          whose incremental benefits do not ex-  
25          ceed their incremental costs; and

1                   “(VIII) include analysis of effects  
2                   on private incentives and possible un-  
3                   intended consequences; and

4                   “(iii) the agency shall adhere to the  
5                   methodology so established in all  
6                   rulemakings.

7                   “(B) If the agency does not select the  
8                   least-cost regulatory option as its proposed rule,  
9                   the agency shall justify its selection, explain-  
10                  ing—

11                  “(i) how that selection furthers other  
12                  goals or requirements relevant to regu-  
13                  lating matters within the agency’s jurisdic-  
14                  tion and why these should override cost  
15                  savings; and

16                  “(ii) why each of the other regulatory  
17                  options not chosen would not sufficiently  
18                  further such other goals or requirements.

19                  “(C) If the agency makes a determination  
20                  under paragraph (1)(D) that the monetized cost  
21                  of a rule exceeds the applicable monetary limit  
22                  under clause (iv) of such paragraph for any 12-  
23                  month period, the agency head shall—

24                  “(i) first issue an advanced notice of  
25                  proposed rulemaking;

1           “(ii) provide notice to the appropriate  
2 Congressional committees and keep such  
3 committees informed of the status of the  
4 rulemaking; and

5           “(iii) ensure that—

6                   “(I) the agency shall notify the  
7 Administrator of the Small Business  
8 Administration, the Director of the  
9 Office of Management and Budget,  
10 and affected parties, and provide each  
11 such person with information on the  
12 potential effects of the proposed rule  
13 on affected parties and the type of af-  
14 fected parties that might be affected;

15                   “(II) not later than 15 days after  
16 the date of receipt of the materials de-  
17 scribed in subclause (I), the Director,  
18 in consultation with the Adminis-  
19 trator, shall identify representatives of  
20 affected parties, 25 percent of which  
21 shall represent small business con-  
22 cerns (as such term is defined in sec-  
23 tion 3(a) of the Small Business Act),  
24 when possible, and all the major  
25 stakeholders shall have the oppor-

1 tunity to obtain advice and rec-  
2 ommendations about the potential ef-  
3 fects of the proposed rule;

4 “(III) the agency shall convene a  
5 review panel consisting wholly of full-  
6 time Federal officers, employees, and  
7 contractors in the agency responsible  
8 for the proposed rule, the Director,  
9 the Administrator, and the represent-  
10 atives of affected parties identified  
11 pursuant to subclause (II);

12 “(IV) the agency shall conduct a  
13 detailed analysis of the costs and ben-  
14 efits of the regulatory option it is ad-  
15 vancing, and, in doing so—

16 “(aa) the agency shall con-  
17 sider the cumulative and inter-  
18 active costs of regulatory require-  
19 ments of Federal, State, local,  
20 tribal, and (where applicable)  
21 international regulations; and

22 “(bb) the agency shall iden-  
23 tify the key uncertainties and as-  
24 sumptions that drive the results  
25 and provide an analysis of how



1 the ranking of the regulatory op-  
2 tions changes if the key assump-  
3 tions are changed;

4 “(V) the panel shall review agen-  
5 cy material prepared in connection  
6 with this subsection, including any  
7 draft proposed rule, and review the  
8 advice and recommendations of each  
9 affected party representative identi-  
10 fied;

11 “(VI) not later than 60 days  
12 after the date the agency convenes a  
13 review panel pursuant to subclause  
14 (III), the review panel shall report on  
15 the comments of the affected party  
16 representatives and its findings as to  
17 issues related to the provisions of this  
18 subsection, and such report shall be  
19 made public as part of the rulemaking  
20 record;

21 “(VII) where appropriate, the  
22 agency shall modify the proposed rule  
23 or the cost-benefit analysis under sub-  
24 clause (IV) based on the report under  
25 subclause (VI);

1           “(VIII) subject to applicable limi-  
2           tations under law, including laws pro-  
3           tecting privacy, trade secrets, and in-  
4           tellectual property, the agency shall  
5           publish for comment all analyses, doc-  
6           umentation, and data under this para-  
7           graph for a public comment period of  
8           at least 30 days and correct defi-  
9           ciencies or omissions that the agency  
10          becomes aware of before adopting a  
11          proposed rule; and

12           “(IX) affected parties, including  
13          State, local, or tribal governments,  
14          and other stakeholders may partici-  
15          pate in the rulemaking by means such  
16          as—

17                   “(aa) the publication of ad-  
18                   vanced and general notices of  
19                   proposed rulemaking in publica-  
20                   tions likely to be obtained by af-  
21                   fected parties;

22                   “(bb) the direct notification  
23                   of interested affected parties;

24                   “(cc) the conduct of open  
25                   conferences or public hearings in-

1 including soliciting and receiving  
2 comments over computer net-  
3 works; and

4 “(dd) reducing the cost or  
5 complexity of procedural rules to  
6 ease participation in the rule-  
7 making.

8 “(D) Every 4 years the agency shall con-  
9 duct a review of all rules of the agency in effect  
10 and determine based on objective data whether  
11 its rules are working as intended, furthering  
12 their objectives, imposing unanticipated costs,  
13 and generating a net benefit or not, and shall  
14 amend such rules if appropriate. The agency  
15 shall report to Congress the findings of each  
16 such review.

17 “(E) Any person may petition an agency to  
18 amend an existing rule made prior to the estab-  
19 lishment of methodology under this paragraph,  
20 and, if the agency denies such a petition, that  
21 denial shall be subject to review under chapter  
22 7 of this title.

23 “(F) Notwithstanding any other provision  
24 of law, including any provision of law that ex-  
25 plicitly prohibits the use of cost-benefit analysis

1 in rulemaking, an agency shall conduct cost-  
2 benefit analyses and report to Congress the  
3 findings with specific recommendations for how  
4 to lower regulatory costs by amending the stat-  
5 utes prohibiting the use thereof.

6 “(3) For purposes of this subsection—

7 “(A) the term ‘regulatory options’ means  
8 any action an agency may take to address an  
9 objective identified under paragraph (1)(B)(i),  
10 including the option not to act;

11 “(B) the term ‘private incentives’ means fi-  
12 nancial gains or losses that motivate actions by  
13 private individuals and businesses, and does not  
14 include any law or regulation that prescribes  
15 private actions or outcomes; and

16 “(C) the term ‘incidental benefit’ means a  
17 claimed benefit outside the specific regulatory  
18 objective or objectives identified under para-  
19 graph (1)(B)(i) a rule is intended to address as  
20 identified in paragraph (1)(A).

21 “(4) All determinations made under this sub-  
22 section shall be subject to review under chapter 7.”.

23 **SEC. 4. CONGRESSIONAL REVIEW.**

24 Section 801(a)(2) of title 5, United States Code, is  
25 amended by adding at the end the following:

1           “(C) The Comptroller General shall exam-  
2           ine the cost-benefit analysis for compliance with  
3           the requirements of section 553(f), including  
4           the agency methodology established under sec-  
5           tion 553(f)(2)(A).

6           “(D) The Comptroller General shall exam-  
7           ine any risk analysis under section  
8           553(f)(1)(C)(iv) pertaining to the cost-benefit  
9           analysis for compliance with the requirements  
10          of section 553(f).

11          “(E) The Comptroller General also shall  
12          examine the agencies’ quadrennial regulatory  
13          reviews for consistency with the requirements of  
14          section 553(f) and report to Congress on the re-  
15          sults.”.

○