

118TH CONGRESS  
1ST SESSION

# S. 839

To require agencies to complete a regulatory impact analysis before issuing a significant rule, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 16, 2023

Mr. THUNE (for himself and Mr. LANKFORD) 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 require agencies to complete a regulatory impact analysis before issuing a significant rule, 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 “Regulatory Trans-  
5 parency Act of 2023”.

6 **SEC. 2. DEFINITIONS.**

7 Section 601 of title 5, United States Code, is amend-  
8 ed—

9 (1) in paragraph (6), by striking “and” at the  
10 end;

1           (2) in paragraph (7) by striking the period at  
2 the end and inserting a semicolon;

3           (3) in paragraph (8)—

4                 (A) by striking “RECORDKEEPING RE-  
5 QUIREMENT.—The” and inserting “the”; and

6                 (B) by striking the period at the end and  
7 inserting “; and”; and

8           (4) by adding at the end the following:

9           “(9) the term ‘significant rule’ means any final  
10 rule that the Administrator of the Office of Informa-  
11 tion and Regulatory Affairs of the Office of Manage-  
12 ment and Budget determines is likely to—

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

19                 “(B) create a significant inconsistency or  
20 otherwise interfere with an action taken or  
21 planned by another Federal agency;

22                 “(C) materially alter the budgetary impact  
23 of entitlements, grants, user fees, or loan pro-  
24 grams or the rights and obligations of recipi-  
25 ents thereof; or

1 “(D) raise novel legal or policy issues.”.

2 **SEC. 3. REGULATORY IMPACT ANALYSES; CONSIDERATION**  
3 **OF SUNSET DATES.**

4 (a) IN GENERAL.—Chapter 6 of title 5, United  
5 States Code, is amended by adding at the end the fol-  
6 lowing:

7 **“§ 613. Regulatory impact analyses**

8 “(a) IN GENERAL.—Before issuing any proposed  
9 rule, final rule, or interim final rule that meets the eco-  
10 nomic threshold of a significant rule described in section  
11 601(9)(A), an agency shall conduct a regulatory impact  
12 analysis to evaluate the proposed rule, final rule, or in-  
13 terim final rule, as applicable.

14 “(b) REGULATORY IMPACT ANALYSES.—An analysis  
15 under subsection (a) shall—

16 “(1) be based upon the best reasonably obtain-  
17 able supporting information, consistent with Execu-  
18 tive Order 12866 (5 U.S.C. 601 note; relating to  
19 regulatory planning and review) and any other rel-  
20 evant guidance from the Office of Management and  
21 Budget;

22 “(2) be transparent, replicable, and objective;

23 “(3) describe the need to be addressed and how  
24 the rule would address that need;

1           “(4) analyze the potential effects, including the  
2 benefits and costs, of the rule;

3           “(5) to the maximum extent practicable, con-  
4 sider the cumulative regulatory burden on the regu-  
5 lated entity under subsection (c);

6           “(6) consider the potential effects on different  
7 types and sizes of businesses, if applicable;

8           “(7) for a proposed rule that is likely to lead  
9 to a significant rule, or a final or interim final rule  
10 that is a significant rule—

11           “(A) describe the need to be addressed, in-  
12 cluding—

13           “(i) the supporting information dem-  
14 onstrating the need;

15           “(ii) the failures of private markets  
16 that warrant new agency action, if applica-  
17 ble; and

18           “(iii) whether existing law, including  
19 regulations, has created or contributed to  
20 the need;

21           “(B) define the baseline for the analysis;

22           “(C) set the timeframe of the analysis;

23           “(D) analyze any available regulatory al-  
24 ternatives, including—

1           “(i) if rulemaking is not specifically  
2           directed by statute, the alternative of not  
3           regulating;

4           “(ii) any alternatives that specify per-  
5           formance objectives rather than identify or  
6           require the specific manner of compliance  
7           that regulated entities must adopt;

8           “(iii) any alternatives that involve the  
9           deployment of innovative technology or  
10          practices; and

11          “(iv) any alternatives that involve dif-  
12          ferent requirements for different types or  
13          sizes of businesses, if applicable;

14          “(E) identify the effects of the available  
15          regulatory alternatives described in subpara-  
16          graph (D);

17          “(F) identify the effectiveness of tort law  
18          to address the identified need;

19          “(G) to the maximum extent practicable,  
20          quantify and monetize the benefits and costs of  
21          the selected regulatory alternative and the avail-  
22          able alternatives under consideration;

23          “(H) discount future benefits and costs  
24          quantified and monetized under subparagraph  
25          (G);

1           “(I) to the maximum extent practicable,  
2           evaluate non-quantified and non-monetized ben-  
3           efits and costs of the selected regulatory alter-  
4           native and the available alternatives under con-  
5           sideration; and

6           “(J) characterize any uncertainty in bene-  
7           fits, costs, and net benefits.

8           “(c) CUMULATIVE REGULATORY BURDEN.—In con-  
9           sidering the cumulative regulatory burden under sub-  
10          section (b)(5), an agency shall—

11           “(1) identify and assess the benefits and costs  
12          of other regulations require compliance by the same  
13          regulated entities to attempt to achieve similar regu-  
14          latory objectives;

15           “(2) evaluate whether the rule is inconsistent  
16          with, incompatible with, or duplicative of other regu-  
17          lations; and

18           “(3) consider whether the estimated benefits  
19          and costs of the rule increase or decrease as a result  
20          of other regulations issued by the agency, including  
21          regulations that are not yet fully implemented, com-  
22          pared to the benefits and costs of that rule in the  
23          absence of such regulations.

24           “(d) LESS BURDENSOME ALTERNATIVES.—If, after  
25          conducting an analysis under subsection (a) for a proposed

1 rule that is likely to lead to a significant rule, or a final  
2 rule or interim final that is a significant rule, the agency  
3 selects a regulatory approach that is not the least burden-  
4 some compared to an available regulatory alternative, the  
5 agency shall include—

6           “(1) in the summary section of the preamble a  
7 statement that the selected approach is more bur-  
8 densome than an available regulatory alternative;  
9 and

10           “(2) a justification, with supporting informa-  
11 tion, for the selected approach.

12           “(e) REGULATORY DETERMINATION.—

13           “(1) IN GENERAL.—Except as expressly pro-  
14 vided otherwise by law, an agency may issue a pro-  
15 posed rule, final rule, or interim final rule only upon  
16 a reasoned determination that the benefits of the  
17 rule justify the costs of the rule.

18           “(2) REQUIREMENTS.—

19           “(A) ALTERNATIVE.—Whenever an agency  
20 is expressly required by law to issue a rule, the  
21 agency shall select a regulatory alternative that  
22 has benefits that exceed costs and complies with  
23 law.

24           “(B) COMPLIANCE.—If it is not possible to  
25 comply with the law by selecting a regulatory

1 alternative that has benefits that exceed costs,  
2 an agency shall select the regulatory alternative  
3 that has the least costs and complies with law.

4 **“§ 614. Consideration of sunset dates**

5 “(a) SUNSET.—Not later than July 1, 2023, an agen-  
6 cy shall, for each proposed rule or interim final rule of  
7 the agency that meets the economic threshold of a signifi-  
8 cant rule described in section 601(9)(A), include an ex-  
9 plicit consideration of a sunset date for the rule.

10 “(b) ELEMENTS.—The consideration described in  
11 subsection (a) for a proposed rule or interim final rule  
12 described in that subsection shall include an assessment  
13 of whether the rule—

14 “(1) could become outmoded or outdated in  
15 light of changed circumstances, including the avail-  
16 ability of new technologies; or

17 “(2) could become excessively burdensome after  
18 a period of time due to, among other things—

19 “(A) disproportionate costs on small busi-  
20 nesses;

21 “(B) the net effect on employment, includ-  
22 ing jobs added or lost in the private sector; and

23 “(C) costs that exceed benefits.

24 “(c) PUBLICATION.—A summary of the consideration  
25 described in subsection (a) for a proposed rule or interim



1 final rule described in that subsection shall be published  
2 in the Federal Register along with the proposed or interim  
3 final rule, as applicable.”.

4 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—  
5 The table of sections for chapter 6 of title 5, United States  
6 Code, is amended by adding at the end the following:

“613. Regulatory impact analyses.

“614. Consideration of sunset dates.”.

7 **SEC. 4. JUDICIAL REVIEW.**

8 Section 611(a) of title 5, United States Code, is  
9 amended, in paragraphs (1) and (2), by striking “and  
10 610” and inserting “610, and 613”.

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