

118TH CONGRESS
1ST SESSION

S. _____

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

IN THE SENATE OF THE UNITED STATES

Mr. THUNE (for himself and Mr. LANKFORD) introduced the following bill; which was read twice and referred to the Committee on

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”.