

Union Calendar No. 741

118TH CONGRESS
2^D SESSION

H. R. 3230

[Report No. 118–906, Part I]

To amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analyses for certain rules, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 2023

Ms. FOXX (for herself and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on Oversight and Accountability, and in addition to the Committees on Rules, the Budget, and the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 18, 2024

Additional sponsors: Mrs. PELTOLA, Mr. GOLDEN of Maine, Mr. MOLINARO, Mr. SESSIONS, and Mrs. HINSON

DECEMBER 18, 2024

Reported from the Committee on Oversight and Accountability with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

DECEMBER 18, 2024

Committees on Rules, the Budget, and the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on May 11, 2023]

A BILL

To amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analyses for certain rules, 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 “Unfunded Mandates Ac-*
5 *countability and Transparency Act of 2023”.*

6 **SEC. 2. REGULATORY IMPACT ANALYSES FOR CERTAIN**
7 **RULES.**

8 *The Unfunded Mandates Reform Act of 1995 (2 U.S.C.*
9 *1501 et seq.) is amended—*

10 *(1) by striking “tribal” each place that term ap-*
11 *pears and inserting “Tribal”;*

12 *(2) in section 3 (2 U.S.C. 1502)—*

13 *(A) in paragraph (1), by striking “and” at*
14 *the end;*

15 *(B) in paragraph (2), by striking the period*
16 *at the end and inserting “and”; and*

17 *(C) by adding at the end the following:*

18 *“(3) the term ‘major rule’ means a rule, as de-*
19 *finied in section 551 of title 5, United States Code,*
20 *that the Administrator of the Office of Information*
21 *and Regulatory Affairs determines is likely to*
22 *cause—*

23 *“(A) an annual effect on the economy of*
24 *\$100,000,000 or more, adjusted once every 5*
25 *years to reflect increases in the Consumer Price*

1 *Index for All Urban Consumers, as published by*
2 *the Bureau of Labor Statistics of the Department*
3 *of Labor;*

4 “(B) *a major increase in costs or prices for*
5 *consumers, individual industries, Federal, State,*
6 *local, or Tribal government agencies, or geo-*
7 *graphic regions; or*

8 “(C) *significant adverse effects on competi-*
9 *tion, employment, investment, productivity, in-*
10 *novation, public health and safety, or the ability*
11 *of United States-based enterprises to compete*
12 *with foreign-based enterprises in domestic and*
13 *export markets.”; and*

14 *(3) in section 202 (2 U.S.C. 1532)—*

15 *(A) by striking the section heading and in-*
16 *serting the following:*

17 **“SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN**
18 **RULES.”;**

19 *(B) by redesignating subsections (b) and (c)*
20 *as subsections (d) and (e), respectively;*

21 *(C) by striking subsection (a) and inserting*
22 *the following:*

23 “(a) *DEFINITION OF COST.—In this section, the term*
24 *‘cost’ means the cost of compliance and any reasonably fore-*

1 *seeable indirect costs, including revenues lost, as a result*
2 *of a major rule of an agency that is subject to this section.*

3 “(b) *REGULATORY IMPACT ANALYSES.*—

4 “(1) *REQUIREMENT.*—*Before promulgating any*
5 *proposed or final major rule, the agency promul-*
6 *gating the major rule shall prepare and publish in*
7 *the Federal Register an initial and final regulatory*
8 *impact analysis with respect to the major rule.*

9 “(2) *INITIAL REGULATORY IMPACT ANALYSIS.*—
10 *An initial regulatory impact analysis required under*
11 *paragraph (1) shall—*

12 “(A) *accompany the notice of proposed rule-*
13 *making with respect to the major rule that is the*
14 *subject of the analysis; and*

15 “(B) *be open to public comment.*

16 “(3) *FINAL REGULATORY IMPACT ANALYSIS.*—*A*
17 *final regulatory impact analysis required under*
18 *paragraph (1) shall accompany the final major rule*
19 *that is the subject of the analysis.*

20 “(c) *CONTENT.*—*Each initial and final regulatory im-*
21 *pact analysis prepared and published under subsection (b)*
22 *shall include, with respect to the major rule that is the sub-*
23 *ject of the analysis—*

1 “(1)(A) an analysis of the anticipated benefits
2 and costs of the major rule, which shall be quantified
3 to the extent feasible;

4 “(B) an analysis of the benefits and costs of a
5 reasonable number of regulatory alternatives within
6 the range of the discretion of the agency under the
7 statute authorizing the major rule, including alter-
8 natives that—

9 “(i) require no action by the Federal Gov-
10 ernment; and

11 “(ii)(I) use incentives and market-based
12 means to encourage the desired behavior;

13 “(II) provide information based upon which
14 the public can make choices; or

15 “(III) employ other flexible regulatory op-
16 tions that permit the greatest flexibility in
17 achieving the objectives of the statute authorizing
18 the major rule; and

19 “(C) an explanation of how the major rule com-
20 plies with the requirements of section 205;

21 “(2) an assessment of the extent to which—

22 “(A) the costs to State, local, and Tribal
23 governments may be paid with Federal financial
24 assistance (or otherwise paid for by the Federal
25 Government); and

1 “(B) Federal resources are available to
2 carry out the major rule;

3 “(3) estimates of—

4 “(A) any disproportionate budgetary effects
5 of the major rule upon any particular—

6 “(i) regions of the United States;

7 “(ii) State, local, or Tribal govern-
8 ments;

9 “(iii) types of communities, including
10 urban or rural communities; or

11 “(iv) segments of the private sector;
12 and

13 “(B) the effect of the major rule on job cre-
14 ation or job loss, which shall be quantified to the
15 extent feasible; and

16 “(4)(A) a description of the extent of the prior
17 consultation of the agency under section 204 with
18 elected representatives of each affected State, local, or
19 Tribal government;

20 “(B) a summary of the comments and concerns
21 that were presented to the agency orally or in writing
22 by State, local, or Tribal governments; and

23 “(C) a summary of the evaluation by the agency
24 of the comments and concerns described in subpara-
25 graph (B).”;

1 (D) in subsection (d), as so redesignated, by
2 striking “a statement under subsection (a) is re-
3 quired, the agency shall include in the promulga-
4 tion a summary of the information contained in
5 the statement” and inserting “an analysis under
6 subsection (b) is required, the agency promul-
7 gating the major rule shall include in the pro-
8 mulgation a summary of the information con-
9 tained in the analysis”; and

10 (E) in subsection (e), as so redesignated, by
11 striking “any statement required under sub-
12 section (a) in conjunction with or as a part of
13 any other statement or analysis, provided that
14 the statement or analysis satisfies the provisions
15 of subsection (a)” and inserting “any analysis
16 required under subsection (b) in conjunction
17 with, or as a part of, any other statement or
18 analysis if the other statement or analysis satis-
19 fies the requirements of subsections (b) and (c)”.

20 **SEC. 3. ENHANCED STAKEHOLDER CONSULTATION.**

21 Section 204 of the Unfunded Mandates Reform Act of
22 1995 (2 U.S.C. 1534) is amended—

23 (1) in the section heading, by inserting “**AND**
24 **PRIVATE SECTOR**” before “**INPUT**”;

25 (2) in subsection (a)—

1 (A) by inserting “, and impacted parties
2 within the private sector (including small busi-
3 nesses),” after “on their behalf”; and

4 (B) by striking “Federal intergovernmental
5 mandates” and inserting “Federal mandates”;
6 and

7 (3) by amending subsection (c) to read as fol-
8 lows:

9 “(c) *GUIDELINES.*—For appropriate implementation
10 of subsections (a) and (b) consistent with applicable laws
11 and regulations, the following guidelines shall be followed:

12 “(1) Consultations shall take place as early as
13 possible, before issuance of a notice of proposed rule-
14 making, continue through the final rule stage, and be
15 integrated explicitly into the rulemaking process.

16 “(2) Agencies shall consult with a wide variety
17 of State, local, and Tribal officials and impacted par-
18 ties within the private sector (including small busi-
19 nesses). Geographic, political, and other factors that
20 may differentiate varying points of view should be
21 considered.

22 “(3) Agencies should estimate benefits and costs
23 to assist with these consultations. The scope of the
24 consultation should reflect the cost and significance of
25 the Federal mandate being considered.

1 “(4) Agencies shall, to the extent practicable—

2 “(A) seek out the views of State, local, and
3 Tribal governments, and impacted parties with-
4 in the private sector (including small busi-
5 nesses), on costs, benefits, and risks; and

6 “(B) solicit ideas about alternative methods
7 of compliance and potential flexibilities, and
8 input on whether the Federal regulation will
9 harmonize with and not duplicate similar laws
10 in other levels of government.

11 “(5) Consultations shall address the cumulative
12 impact of regulations on the affected entities.

13 “(6) Agencies may accept electronic submissions
14 of comments by relevant parties but may not use
15 those comments as the sole method of satisfying the
16 guidelines in this subsection.”.

17 **SEC. 4. MAXIMIZE NET BENEFITS OR PROVIDE EXPLA-**
18 **NATION.**

19 *Title II of the Unfunded Mandates Reform Act of 1995*
20 *(2 U.S.C. 1531 et seq.) is amended by striking section 205*
21 *(2 U.S.C. 1535) and inserting the following:*

22 **“SEC. 205. MAXIMIZE NET BENEFITS.**

23 “(a) *DEFINITION OF COST.*—*In this section, the term*
24 *‘cost’ has the meaning given the term in section 202(a).*

1 “(b) *REQUIREMENT.*—Before promulgating any pro-
2 posed or final major rule for which a regulatory impact
3 analysis is required under section 202, an agency shall from
4 the alternatives identified and considered under section
5 202(c)(1)(B), select the alternative that maximizes net bene-
6 fits, taking into consideration only the costs and benefits
7 that arise within the scope of the statutory provision that
8 authorizes the rulemaking.

9 “(c) *EXCEPTIONS.*—An agency may adopt an alter-
10 native other than as required under subsection (b) only if—

11 “(1) the Administrator of the Office of Informa-
12 tion and Regulatory Affairs approves the adoption by
13 the agency of the alternative; and

14 “(2) the alternative is adopted to—

15 “(A) account for costs or benefits that can-
16 not be quantified, including costs or benefits re-
17 lated to constitutional or civil rights, provided
18 that the agency identifies all such costs and bene-
19 fits and explains why those costs and benefits
20 justify the adoption of the alternative; or

21 “(B) achieve additional benefits or cost re-
22 ductions, provided that the agency—

23 “(i) identifies—

1 “(I) all such additional benefits
2 and the associated costs of those bene-
3 fits; and

4 “(II) all such cost reductions and
5 the associated benefits of those cost re-
6 ductions; and

7 “(ii) explains why—

8 “(I) the additional benefits justify
9 the additional costs; or

10 “(II) the additional cost reduc-
11 tions justify any benefits foregone.”.

12 **SEC. 5. NEW AUTHORITIES AND RESPONSIBILITIES FOR OF-**
13 ****OFFICE OF INFORMATION AND REGULATORY AF-****
14 ****FAIRS.****

15 Section 208 of the Unfunded Mandates Reform Act of
16 1995 (2 U.S.C. 1538) is amended to read as follows:

17 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**
18 ****FAIRS RESPONSIBILITIES.****

19 “(a) *IN GENERAL.*—The Administrator of the Office
20 of Information and Regulatory Affairs (in this section re-
21 ferred to as the ‘Administrator’) shall provide meaningful
22 guidance and oversight so that the major rules of an agency
23 for which a regulatory impact analysis is required under
24 section 202—

1 “(1) are consistent with the principles and re-
2 quirements of this title, as well as other applicable
3 laws; and

4 “(2) and do not conflict with the policies or ac-
5 tions of another agency.

6 “(b) NOTIFICATION.—If the Administrator determines
7 that the major rules of an agency for which a regulatory
8 impact analysis is required under section 202 do not com-
9 ply with the principles and requirements of this title, are
10 not consistent with other applicable laws, or conflict with
11 the policies or actions of another agency, the Administrator
12 shall—

13 “(1) identify areas of noncompliance;

14 “(2) notify the agency; and

15 “(3) request that the agency comply before the
16 agency finalizes the major rule concerned.

17 “(c) ANNUAL STATEMENTS TO CONGRESS ON AGENCY
18 COMPLIANCE.—The Administrator shall submit to Con-
19 gress, including the Committee on Homeland Security and
20 Governmental Affairs of the Senate and the Committee on
21 Oversight and Accountability of the House of Representa-
22 tives, an annual written report that, for the 1-year period
23 preceding the report—

24 “(1) details compliance by each agency with the
25 requirements of this title that relate to major rules for

1 *which a regulatory impact analysis is required by*
2 *section 202, including activities undertaken at the re-*
3 *quest of the Administrator to improve compliance;*
4 *and*

5 *“(2) contains an appendix detailing compliance*
6 *by each agency with section 204.”.*

7 **SEC. 6. INITIATION OF RULEMAKING.**

8 *The Unfunded Mandates Reform Act of 1995 (2 U.S.C.*
9 *1501 et seq.) is amended—*

10 *(1) by redesignating section 209 (2 U.S.C. 1531*
11 *note) as section 210; and*

12 *(2) by inserting after section 208 (2 U.S.C.*
13 *1548) the following:*

14 **“SEC. 209. INITIATION OF RULEMAKING FOR MAJOR RULES.**

15 *“When an agency determines to initiate a rulemaking*
16 *that may result in a major rule, the agency shall—*

17 *“(1) establish an electronic docket for that rule-*
18 *making, which may have a physical counterpart; and*

19 *“(2) publish a notice of initiation of rulemaking*
20 *in the Federal Register, which shall—*

21 *“(A) briefly describe the subject and objec-*
22 *tives of, and the problem to be solved by, the*
23 *major rule;*

24 *“(B) refer to the legal authority under*
25 *which the major rule would be proposed, includ-*

1 *ing the specific statutory provision that author-*
2 *izes the rulemaking;*

3 “(C) *invite interested persons to propose al-*
4 *ternatives and other ideas regarding how best to*
5 *accomplish the objectives of the agency in the*
6 *most effective manner;*

7 “(D) *indicate how interested persons may*
8 *submit written material for the docket; and*

9 “(E) *appear in the Federal Register not*
10 *later than 90 days before the date on which the*
11 *agency publishes a notice of proposed rulemaking*
12 *for the major rule.”.*

13 **SEC. 7. INCLUSION OF APPLICATION TO INDEPENDENT**
14 **REGULATORY AGENCIES.**

15 (a) *IN GENERAL.*—Section 421(1) of the Congressional
16 *Budget Act of 1974 (2 U.S.C. 658(1)) is amended by strik-*
17 *ing “, but does not include independent regulatory agen-*
18 *cies”.*

19 (b) *EXEMPTION FOR MONETARY POLICY.*—The Un-
20 *funded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.)*
21 *is amended by inserting after section 5 the following:*

22 **“SEC. 6. EXEMPTION FOR MONETARY POLICY.**

23 *“Nothing in title II, III, or IV shall apply to rules*
24 *that concern monetary policy proposed or implemented by*

1 *the Board of Governors of the Federal Reserve System or*
2 *the Federal Open Market Committee.”.*

3 **SEC. 8. JUDICIAL REVIEW.**

4 *Title IV of the Unfunded Mandates Reform Act of 1995*
5 *is amended by striking section 401 (2 U.S.C. 1571) and*
6 *inserting the following:*

7 **“SEC. 401. JUDICIAL REVIEW.**

8 *“(a) IN GENERAL.—A person that is aggrieved by*
9 *final agency action in adopting a major rule that is subject*
10 *to section 202 is entitled to judicial review of whether the*
11 *agency complied with section 202(b), 202(c)(1), or 205 with*
12 *respect to the rule.*

13 *“(b) SCOPE OF REVIEW.—Chapter 7 of title 5, United*
14 *States Code, shall govern the scope of judicial review under*
15 *subsection (a).*

16 *“(c) JURISDICTION.—Each court that has jurisdiction*
17 *to review a rule for compliance with section 553 of title*
18 *5, United States Code, or under any other provision of law,*
19 *shall have jurisdiction to review a claim brought under sub-*
20 *section (a).*

21 *“(d) RELIEF AVAILABLE.—In granting relief in an ac-*
22 *tion under this section, a court shall order the agency that*
23 *promulgated the major rule that is under review to take*
24 *remedial action consistent with chapter 7 of title 5, United*
25 *States Code.”.*

1 **SEC. 9. APPLYING SUBSTANTIVE POINT OF ORDER TO PRI-**
2 **VATE SECTOR MANDATES.**

3 *Section 425(a)(2) of the Congressional Budget Act of*
4 *1974 (2 U.S.C. 658d(a)(2)) is amended—*

5 *(1) by striking “Federal intergovernmental man-*
6 *dates” and inserting “Federal mandates”; and*

7 *(2) by striking “section 424(a)(1)” and inserting*
8 *“subsection (a)(1) or (b)(1) of section 424”.*

9 **SEC. 10. EFFECTIVE DATE.**

10 *Sections 3, 4, 5, and 7 of this Act and the amendments*
11 *made by those sections shall take effect on the date that is*
12 *120 days after the date of enactment of this Act.*

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