

Calendar No. 643

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 116-333

UNFUNDED MANDATES ACCOUNTABILITY
AND TRANSPARENCY ACT

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4077

TO AMEND THE UNFUNDED MANDATES REFORM ACT OF 1995
TO PROVIDE FOR REGULATORY IMPACT ANALYSES FOR CERTAIN
RULES, AND FOR OTHER PURPOSES



DECEMBER 16, 2020.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4077]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4077) to amend the Unfunded Mandates Reform Act of 1995 to provide for regulatory impact analysis for certain rules, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 4077, the Unfunded Mandates Accountability and Transparency Act, updates and expands the Unfunded Mandates Reform Act (UMRA) by requiring Federal agencies to assess the impact of new major rules on jobs, consider market-based, nongovernmental regulatory alternatives, and maximize benefits instead of selecting the least costly, most cost effective regulatory alternative as required by UMRA. The bill also extends UMRA to independent agencies; expands the rules that trigger UMRA's requirements to those that have an annual effect on the economy of \$100 million or more; permits cost consideration and meaningful judicial review; increases stakeholder consultation; and expands the budget point

of order for intergovernmental mandates to private sector mandates.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Prior to the 1970s, the Federal Government traditionally relied on voluntary grant-in-aid funding to encourage state and local government participation in Federal activities or services.¹ However, in the 1970s and 1980s, there was an apparent shift in how the Federal Government interacted with states and localities,² increasingly relying on “new, more intrusive, and more compulsory” programs and regulations to require compliance under the threat of legal penalties.³ State and local government advocates viewed these intrusive methods as “unfunded mandates” on states, and that such mandates were an infringement on American federalism.⁴

The state and local government advocates argued that a Federal statute was needed to prevent legislation and regulations that imposed higher costs and inefficiencies on state and local governments.⁵ These efforts resulted in President Clinton signing UMRA into law.⁶

UMRA requires the Congressional Budget Office (CBO) to assess the cost of mandates that would apply to state, local, and tribal governments, or to the private sector.⁷ The purpose of UMRA is to ensure that Congress receives information about the potential effects of mandates of legislation under congressional consideration.⁸ UMRA refers to obligations from legislation or regulations as mandates to intergovernmental or private sector entities.⁹

As part of its review, CBO is required to “determine whether the aggregate direct costs of the mandates would be greater than the statutory thresholds established in UMRA in any of the first five fiscal years in which the mandates are effective.”¹⁰ In 1996, the statutory thresholds established by UMRA were \$50 million for intergovernmental mandates and \$100 million for private-sector mandates.¹¹ The statutory thresholds are annually adjusted for inflation, and by 2019, the thresholds had increased to \$82 million for intergovernmental mandates and \$164 million for private-sector mandates.¹²

Under UMRA, when a mandate results in a restriction on the ability of a private sector entity to generate revenue, “CBO measures the cost of that mandate as the direct loss of income.”¹³ CBO has interpreted that UMRA’s definition of mandate includes prohibitions that result in lost income.¹⁴ Accordingly, CBO measures the

¹ Robert Dilger, Cong. Research Serv., R40957, *Unfunded Mandates Reform Act: History, Impact, and Issues 1* (2020), <https://fas.org/sgp/crs/misc/R40957.pdf>.

² *Id.* at 1–2.

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Unfunded Mandates Reform Act of 1995*, Pub. L. No. 104–4, § 1, 109 Stat. 48 (1995), <https://www.congress.gov/104/plaws/publ4/PLAW-104publ4.pdf>.

⁷ *CBO’s Activities Under the Unfunded Mandates Reform Act*, Cong. Budget Off., <https://www.cbo.gov/publication/51335> (last visited July 31, 2020).

⁸ *Id.*

⁹ Dilger, *supra* note 1, at 1.

¹⁰ Cong. Budget Off., *supra* note 7.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

net income foregone in cases where legislation would ban the production or sale of a good.¹⁵

UMRA prohibits the consideration of a reported bill unless CBO has provided the committee with a published statement about the costs of intergovernmental and private-sector mandates.¹⁶ UMRA also prohibits consideration of reported legislation if the unfunded intergovernmental mandates in the proposed legislation are estimated by CBO to have direct costs above the statutory threshold unless the bill provides direct spending authority or authorizes sufficient appropriations to cover those costs.¹⁷

UMRA also requires Federal agencies to consider regulatory alternatives and select the “least costly, most cost-effective or least burdensome alternative.”¹⁸ Under UMRA, Federal agencies are required to prepare written statements that identify costs and benefits of a Federal mandate that would result in an annual expenditure of \$100 million or more to state, local and tribal governments, or the private sector, prior to promulgating a notice of proposed rulemaking.¹⁹ As the Congressional Research Service (CRS) has noted, most of these requirements were included in President Clinton’s Executive Order 12866.²⁰ UMRA does not apply to participation in voluntary Federal programs and rules issued by most independent regulatory agencies.²¹

According to CRS, CBO has submitted 14,035 estimates of private-sector mandate costs imposed from a specific bill, amendment or conference report between January 1, 1996 and June 30, 2020.²² Of those 14,035 cost estimates, about 15.3 percent had costs imposed on the private sector and 3.2 percent had costs that exceeded UMRA’s threshold.²³ Additionally, CRS has found that most of the mandates identified in regulations are directed at the private sector.²⁴ Of the 297 major rules that “met UMRA’s definition of a mandate on the public or private sector” between 1995 and 2019, 277 were private-sector mandates only.²⁵

In the years since UMRA was enacted, there have been a number of efforts to update the law. One effort to update the law was the Unfunded Mandates Information and Transparency Act of 2019 (UMITA). UMITA would broaden UMRA to include both direct and indirect costs and apply UMRA to independent agencies.²⁶ According to CRS, similar legislation to UMITA was passed by the House during the 112th, 113th, 114th, and 115th Congresses.²⁷

UMATA updates and expands UMRA by requiring agencies to assess regulations’ effect on jobs, and to consider market-based, flexible, and non-governmental alternatives to agency rules. UMATA would require agencies to receive public input earlier in the rulemaking process as the agency develops alternatives. The bill would extend analytical requirements of UMRA to independent

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Cong. Budget Off., *supra* note 7.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Dilger, *supra* note 1, at 4.

²² *Id.* at 15.

²³ *Id.* at 16.

²⁴ *Id.* at 28.

²⁵ *Id.*

²⁶ *Id.* at 34–35.

²⁷ *Id.* at 34 n.133.

agencies and allow judicial review of compliance with UMRA. Finally, UMATA extends UMRA’s budget point of order for intergovernmental unfunded mandates to unfunded mandates on the private sector.

III. LEGISLATIVE HISTORY

Senator Rob Portman (R–OH) introduced S. 4077, the Unfunded Mandates Accountability and Transparency Act, on June 25, 2020, with Senators Deb Fischer (R–NE) and James Lankford (R–OK). Senator Rick Scott (R–FL) later joined as a cosponsor.

The bill was referred to the Committee. The Committee considered S. 4077 at a July 22, 2020 business meeting.

The Committee ordered S. 4077 reported favorably on July 22, 2020, by a roll call vote of 8 yeas to 5 nays. Senators voting in the affirmative were Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, and Hawley. Senators voting in the negative were Peters, Carper, Hassan, Harris, Rosen. For the record only, Senator Sinema voted nay by proxy. Consistent with Committee rules, the Committee reports the bill with a technical amendment by agreement of the Chairman and Ranking Member.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section sets forth that the bill may be referred to as the “Unfunded Mandates Accountability and Transparency Act”.

Section 2. Findings

This section describes congressional findings that regulations provide the public with benefits at particular costs to all levels of government and that the public has the right to be aware of both costs and benefits.

Section 3. Regulatory impact analyses for certain rules

This section amends UMRA by capitalizing Tribal throughout the Act and defining a major rule as any rule which creates an annual economic impact of \$100 million or more; results in a significant cost increase for consumers, private businesses or any level of government; or adversely affects the trade competitiveness of U.S. businesses against foreign businesses. Two subsections are added to section 202 to define cost and to require a preliminary and final regulatory impact analysis to be published in the Federal Register for any proposed major rule. The preliminary analysis must be subject to public comment and should be attached to the published Federal Register notice; the final analysis must attach to the final published version of the rule. Each analysis must include the costs and benefits of the proposed rule along with costs and benefits of potential alternatives, including options that provide the public with information to make choices, require no action by the federal government, or allow for regulatory flexibility. Analysis must also incorporate state, local, and Tribal government costs including an evaluation of how much cannot be offset via Federal assistance; available Federal resources; an explanation of section 205 compliance; rule impacts on the budgets of particular levels of government, types of private businesses, or geographic regions and on em-

ployment; the extent of discussion with government officials at all levels; and an agency evaluation of public comments. Summaries of this analysis must be included in the final proposed rule or any other statement.

Section 4. Enhanced stakeholder consultation

This section amends section 204 of UMRA to incorporate private entities within the section's provisions. Agencies should consult with private entities and all levels of government before and throughout the rulemaking process, including discussions of cost-benefit analyses, potential risks, overall impact, and possible alternatives. Electronic feedback may be utilized but may not be the exclusive method of seeking input.

Section 5. Maximize net benefits or provide explanation

This section replaces the former section 205 of UMRA with a new section 205, which defines "cost" for the purposes of this bill and requires a consideration of potential rules and alternatives followed by the pursuit of the option that provides the most benefit under a cost-benefit analysis within the statutory rulemaking scope. Exceptions to this requirement may be allowed upon permission granted by the Administrator of the Office of Information and Regulatory Affairs (OIRA) and agency showing and explanation of other factors outside the statutory cost-benefit scope or of the potential for lowered costs or increased benefits.

Section 6. New authorities and responsibilities for Office of Information and Regulatory Affairs

This section amends UMRA, section 208, to make the Administrator of OIRA responsible for oversight of agency major rules requiring an impact analysis in order to avoid conflict with rules of other federal agencies and to ensure compliance with other provisions of this bill and other law. Any areas of concern based on agency, bill, or law conflict should be identified, reported to the rulemaking agency, and monitored for future compliance. The Administrator will submit an annual report to Congress describing agency compliance with the terms of this bill and compliance efforts by the administrator.

Section 7. Initiation of rulemaking

This section renames the former section 209 to section 210, and adds a new section 209, which details the procedure for agency introduction of a major rule. Agencies proposing major rules must provide an electronic docket for the rule to be potentially accompanied by a physical component and, at least 90 days before the rule's publication, must publish an initial Federal Register notice describing the problem addressed by the rule, the rule and its implications, the agency's authority to institute the rule, and the method by which public commenters may submit thoughts on or suggested alternatives to the rule.

Section 8. Inclusion of application to independent regulatory agencies

This section provides an exemption for monetary rules proposed by the Federal Open Market Committee or the Federal Reserve

System Board of Governors and amends 2 U.S.C. § 658(1) to include independent agencies within the scope of the Congressional Budget Act of 1974 with an exception for rules that concern monetary policy.

Section 9. Judicial review

This section delineates the availability and scope of judicial review available to individuals affected by enacted agency rules under UMRA, as well as court jurisdiction and form of relief.

Section 10. Applying substantive point of order to private sector mandates

This section expands section 658d(a)(2) the Congressional Budget Act of 1974 to include all federal mandates, not just intergovernmental mandates.

Section 11. Effective date

This section establishes that amendments to existing law made by sections 3–5 and 7 take effect 120 days after this bill is enacted.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

UNFUNDED MANDATES REFORM ACT OF 1995

* * * * *

SEC. 2. PURPOSES.

The purposes of this chapter are—

(1) to strengthen the partnership between the Federal Government and State, local, and **[tribal]** *Tribal* governments;

(2) to end the imposition, in the absence of full consideration by Congress, of Federal mandates on State, local, and **[tribal]** *Tribal* governments without adequate Federal funding, in a manner that may displace other essential State, local, and **[tribal]** *Tribal* governmental priorities;

(3) to assist Congress in its consideration of proposed legislation establishing or revising Federal programs containing Federal mandates affecting State, local, and **tribal** *Tribal* governments, and the private sector by—

(A) providing for the development of information about the nature and size of mandates in proposed legislation; and

(B) establishing a mechanism to bring such information to the attention of the Senate and the House of Representatives before the Senate and the House of Representatives vote on proposed legislation;

(4) * * *

(5) to require that Congress consider whether to provide funding to assist State, local, and **tribal** *Tribal* governments in complying with Federal mandates, to require analyses of the impact of private sector mandates, and through the dissemination of that information provide informed and deliberate decisions by Congress and Federal agencies and retain competitive balance between the public and private sectors;

(6) * * *

(7) to assist Federal agencies in their consideration of proposed regulations affecting State, local, and **tribal** *Tribal* governments, by—

(A) requiring that Federal agencies develop a process to enable the elected and other officials of State, local, and **tribal** *Tribal* governments to provide input when Federal agencies are developing regulations; and

(B) requiring that Federal agencies prepare and consider estimates of the budgetary impact of regulations containing Federal mandates upon State, local, and **tribal** *Tribal* governments and the private sector before adopting such regulations, and ensuring that small governments are given special consideration in that process; and

(8) to begin consideration of the effect of previously imposed Federal mandates, including the impact on State, local, and **tribal** *Tribal* governments of Federal court interpretations of Federal statutes and regulations that impose Federal intergovernmental mandates.

SEC. 3. DEFINITIONS.

For purposes of this chapter—

(1) except as provided in section 1555 of this title, the terms defined under section 658 of this title shall have the meanings as so defined; **and**

(2) the term “Director” means the Director of the Congressional Budget Office^[.] *and*

(3) *the term “major rule” means a rule, as defined in section 551 of title 5, United States Code, that the Administrator of the Office of Information and Regulatory Affairs determines is likely to cause—*

(A) an annual effect on the economy of \$100,000,000 or more, adjusted once every 5 years to reflect increases in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the Department of Labor;

(B) a major increase in costs or prices for consumers, individual industries, Federal, State, local, or Tribal government agencies, or geographic regions; or

(C) significant adverse effects on competition, employment, investment, productivity, innovation, public health and safety, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

* * * * *

SEC. 6. EXEMPTION FOR MONETARY POLICY.

Nothing in title II, III, or IV shall apply to rules that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.

* * * * *

**TITLE II—REGULATORY ACCOUNTABILITY
AND REFORM**

SEC. 201. * * *

SEC. 202. [STATEMENTS TO ACCOMPANY SIGNIFICANT REGULATORY ACTIONS] REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.

[(a) IN GENERAL.—Unless otherwise prohibited by law, before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement containing—

(1) an identification of the provision of Federal law under which the rule is being promulgated;

(2) a qualitative and quantitative assessment of the anticipated costs and benefits of the Federal mandate, including the costs and benefits to State, local, and tribal governments or the private sector, as well as the effect of the Federal mandate on health, safety, and the natural environment and such an assessment shall include—

(A) an analysis of the extent to which such costs to State, local, and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and

(B) the extent to which there are available Federal resources to carry out the intergovernmental mandate;

(3) estimates by the agency, if and to the extent that the agency determines that accurate estimates are reasonably feasible, of—

(A) the future compliance costs of the Federal mandate; and

(B) any disproportionate budgetary effects of the Federal mandate upon any particular regions of the nation or par-

particular State, local, or tribal governments, urban or rural or other types of communities, or particular segments of the private sector;

(4) estimates by the agency of the effect on the national economy, such as the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of United States goods and services, if and to the extent that the agency in its sole discretion determines that accurate estimates are reasonably feasible and that such effect is relevant and material; and

(5)

(A) a description of the extent of the agency's prior consultation with elected representatives (under section 1534 of this title) of the affected State, local, and tribal governments;

(B) a summary of the comments and concerns that were presented by State, local, or tribal governments either orally or in writing to the agency; and

(C) a summary of the agency's evaluation of those comments and concerns.】

(a) *DEFINITION OF COST.*—*In this section, the term “cost” means the cost of compliance and any reasonably foreseeable indirect costs, including revenues lost, as a result of a major rule of an agency that is subject to this section.*

(b) *REGULATORY IMPACT ANALYSES.*—

(1) *REQUIREMENT.*—*Before promulgating any proposed or final major rule, the agency promulgating the major rule shall prepare and publish in the Federal Register an initial and final regulatory impact analysis with respect to the major rule.*

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

(A) *accompany the notice of proposed rulemaking with respect to the major rule that is the subject of the analysis; and*

(B) *be open to public comment.*

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

(c) *CONTENT.*—*Each initial and final regulatory impact analysis prepared and published under subsection (b) shall include, with respect to the major rule that is the subject of the analysis—*

(1)

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

(B) *an analysis of the benefits and costs of a reasonable number of regulatory alternatives within the range of the discretion of the agency under the statute authorizing the major rule, including alternatives that—*

(i) *require no action by the Federal Government; and*

(ii)

(I) *use incentives and market-based means to encourage the desired behavior;*

(II) *provide information based upon which the public can make choices; or*

(III) employ other flexible regulatory options that permit the greatest flexibility in achieving the objectives of the statute authorizing the major rule; and

(C) an explanation of how the major rule complies with the requirements of section 205;

(2) an assessment of the extent to which—

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

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

(3) estimates of—

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

(i) regions of the United States;

(ii) State, local, or Tribal governments;

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

(iv) segments of the private sector; and

(B) the effect of the major rule on job creation or job loss, which shall be quantified to the extent feasible; and

(4)

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

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

(C) a summary of the evaluation by the agency of the comments and concerns described in subparagraph (B).

[b] (d) PROMULGATION.—In promulgating a general notice of proposed rulemaking or a final rule for which **[a statement under subsection (a) is required, the agency shall include in the promulgation a summary of the information contained in the statement]** *an analysis under subsection (b) is required, the agency promulgating the major rule shall include in the promulgation a summary of the information contained in the analysis.*

[c] (e) PREPARATION IN CONJUNCTION WITH OTHER STATEMENT.—Any agency may prepare **[any statement required under subsection (a) in conjunction with or as a part of any other statement or analysis, provided that the statement or analysis satisfies the provisions of subsection (a)]** *any analysis required under subsection (b) in conjunction with, or as a part of, any other statement or analysis if the other statement or analysis satisfies the requirements of subsections (b) and (c).*

SEC. 203. * * *

SEC. 204. STATE, LOCAL, AND TRIBAL GOVERNMENT AND PRIVATE SECTOR INPUT.

(a) IN GENERAL.—Each agency shall, to the extent permitted in law, develop an effective process to permit elected officers of State, local, and **[tribal]** *Tribal* governments (or their designated employees with authority to act on their behalf), *and impacted parties within the private sector (including small businesses)* to provide meaningful and timely input in the development of regulatory pro-

posals containing significant **【Federal intergovernmental mandates】** *Federal mandates*.

(b) MEETINGS BETWEEN STATE, LOCAL, **【TRIBAL】** *TRIBAL* AND FEDERAL OFFICERS.—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to actions in support of intergovernmental communications where—

(1) meetings are held exclusively between Federal officials and elected officers of State, local, and **【tribal】** *Tribal* governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and

(2) * * *

【(c) IMPLEMENTING GUIDELINES.—No later than 6 months after March 22, 1995, the President shall issue guidelines and instructions to Federal agencies for appropriate implementation of subsections (a) and (b) consistent with applicable laws and regulations.】

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

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

(2) *Agencies shall consult with a wide variety of State, local, and Tribal officials and impacted parties within the private sector (including small businesses). Geographic, political, and other factors that may differentiate varying points of view should be considered.*

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

(4) *Agencies shall, to the extent practicable—*

(A) *seek out the views of State, local, and Tribal governments, and impacted parties within the private sector (including small businesses), on costs, benefits, and risks; and*

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

(5) *Consultations shall address the cumulative impact of regulations on the affected entities.*

(6) *Agencies may accept electronic submissions of comments by relevant parties but may not use those comments as the sole method of satisfying the guidelines in this subsection.*

【SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.】 **SEC. 205. MAXIMIZE NET BENEFITS.**

【(a) IN GENERAL.—Except as provided in subsection (b), before promulgating any rule for which a written statement is required under section 1532 of this title, the agency shall identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, for—

(1) State, local, and tribal governments, in the case of a rule containing a Federal intergovernmental mandate; and

(2) the private sector, in the case of a rule containing a Federal private sector mandate.

(b) EXCEPTION.—The provisions of subsection (a) shall apply unless—

(1) the head of the affected agency publishes with the final rule an explanation of why the least costly, most cost-effective or least burdensome method of achieving the objectives of the rule was not adopted; or

(2) the provisions are inconsistent with law.

(c) OMB CERTIFICATION.—No later than 1 year after March 22, 1995, the Director of the Office of Management and Budget shall certify to Congress, with a written explanation, agency compliance with this section and include in that certification agencies and rulemakings that fail to adequately comply with this section.】

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

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

(c) EXCEPTIONS.—*An agency may adopt an alternative other than as required under subsection (b) only if—*

(1) *the Administrator of the Office of Information and Regulatory Affairs approves the adoption by the agency of the alternative; and*

(2) *the alternative is adopted to—*

(A) *account for costs or benefits that cannot be quantified, including costs or benefits related to constitutional or civil rights, provided that the agency identifies all such costs and benefits and explains why those costs and benefits justify the adoption of the alternative; or*

(B) *achieve additional benefits or cost reductions, provided that the agency—*

(i) *identifies—*

(I) *all such additional benefits and the associated costs of those benefits; and*

(II) *all such cost reductions and the associated benefits of those cost reductions; and*

(ii) *explains why—*

(I) *the additional benefits justify the additional costs; or*

(II) *the additional cost reductions justify any benefits foregone.*

* * * * *

SEC. 208. [ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.] OFFICE OF INFORMATION AND REGULATORY AFFAIRS RESPONSIBILITIES.

【No later than 1 year after March 22, 1995, and annually thereafter, the Director of the Office of Management and Budget shall submit to the Congress, including the Committee on Governmental

Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives, a written report detailing compliance by each agency during the preceding reporting period with the requirements of this subchapter.】

(a) *IN GENERAL.*—*The Administrator of the Office of Information and Regulatory Affairs (in this section referred to as the “Administrator”) shall provide meaningful guidance and oversight so that the major rules of an agency for which a regulatory impact analysis is required under section 202—*

(1) *are consistent with the principles and requirements of this title, as well as other applicable laws; and*

(2) *and do not conflict with the policies or actions of another agency.*

(b) *NOTIFICATION.*—*If the Administrator determines that the major rules of an agency for which a regulatory impact analysis is required under section 202 do not comply with the principles and requirements of this title, are not consistent with other applicable laws, or conflict with the policies or actions of another agency, the Administrator shall—*

(1) *identify areas of noncompliance;*

(2) *notify the agency; and*

(3) *request that the agency comply before the agency finalizes the major rule concerned.*

(c) *ANNUAL STATEMENTS TO CONGRESS ON AGENCY COMPLIANCE.*—*The Administrator shall submit to Congress, including the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Reform of the House of Representatives, an annual written report that, for the 1-year period preceding the report—*

(1) *details compliance by each agency with the requirements of this title that relate to major rules for which a regulatory impact analysis is required by section 202, including activities undertaken at the request of the Administrator to improve compliance; and*

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

SEC. 209. INITIATION OF RULEMAKING FOR MAJOR RULES.

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

(1) *establish an electronic docket for that rulemaking, which may have a physical counterpart; and*

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

(A) *briefly describe the subject and objectives of, and the problem to be solved by, the major rule;*

(B) *refer to the legal authority under which the major rule would be proposed, including the specific statutory provision that authorizes the rulemaking;*

(C) *invite interested persons to propose alternatives and other ideas regarding how best to accomplish the objectives of the agency in the most effective manner;*

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

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

[SEC. 209.] SEC. 2010. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of the enactment of this Act.

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TITLE IV—JUDICIAL REVIEW

[SEC. 401. JUDICIAL REVIEW].

[(a) AGENCY STATEMENTS ON SIGNIFICANT REGULATORY ACTIONS.—

(1) **IN GENERAL.**—Compliance or noncompliance by any agency with the provisions of sections 1532 and 1533(a)(1) and (2) of this title shall be subject to judicial review only in accordance with this section.

(2) **LIMITED REVIEW OF AGENCY COMPLIANCE OR NONCOMPLIANCE.—**

(A) Agency compliance or noncompliance with the provisions of sections 1532 and 1533(a)(1) and (2) of this title shall be subject to judicial review only under section 706(1) of title 5, and only as provided under subparagraph (B).

(B) If an agency fails to prepare the written statement (including the preparation of the estimates, analyses, statements, or descriptions) under section 1532 of this title or the written plan under section 1533(a)(1) and (2) of this title, a court may compel the agency to prepare such written statement.

(3) **REVIEW OF AGENCY RULES.**—In any judicial review under any other Federal law of an agency rule for which a written statement or plan is required under sections 1532 and 1533(a)(1) and (2) of this title, the inadequacy or failure to prepare such statement (including the inadequacy or failure to prepare any estimate, analysis, statement or description) or written plan shall not be used as a basis for staying, enjoining, invalidating or otherwise affecting such agency rule.

(4) **CERTAIN INFORMATION AS PART OF RECORD.**—Any information generated under sections 1532 and 1533(a)(1) and (2) of this title that is part of the rulemaking record for judicial review under the provisions of any other Federal law may be considered as part of the record for judicial review conducted under such other provisions of Federal law.

(5) **APPLICATION OF OTHER FEDERAL LAW.**—For any petition under paragraph (2) the provisions of such other Federal law shall control all other matters, such as exhaustion of administrative remedies, the time for and manner of seeking review and venue, except that if such other Federal law does not provide a limitation on the time for filing a petition for judicial review that is less than 180 days, such limitation shall be 180 days after a final rule is promulgated by the appropriate agency.

(6) **EFFECTIVE DATE.**—This subsection shall take effect on October 1, 1995, and shall apply only to any agency rule for

which a general notice of proposed rulemaking is promulgated on or after such date.

(b) JUDICIAL REVIEW AND RULE OF CONSTRUCTION.—Except as provided in subsection (a)—

(1) any estimate, analysis, statement, description or report prepared under this chapter, and any compliance or noncompliance with the provisions of this chapter, and any determination concerning the applicability of the provisions of this chapter shall not be subject to judicial review; and

(2) no provision of this chapter shall be construed to create any right or benefit, substantive or procedural, enforceable by any person in any administrative or judicial action.】

SEC. 401. JUDICIAL REVIEW.

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

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

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

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

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CONGRESSIONAL BUDGET ACT OF 1974

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SEC. 421. DEFINITIONS.

For purposes of this part:

(1) AGENCY.—The term “agency” has the same meaning as defined in section 551(1) of title 5【, but does not include independent regulatory agencies】.

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SEC. 425. LEGISLATION SUBJECT TO POINT OF ORDER.

(a) * * *

(1) * * *

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of 【Federal intergovernmental mandates】 *Federal mandates* by an amount that causes the thresholds specified in 【section 424(a)(1)】 *subsection (a)(1) or (b)(1) of section 424* of this title to be exceeded, unless—

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