

Calendar No. 522114TH CONGRESS
2^D SESSION**S. 1817****[Report No. 114–282]**

To improve the effectiveness of major rules in accomplishing their regulatory objectives by promoting retrospective review, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 21, 2015

Ms. HEITKAMP (for herself, Mr. LANKFORD, Mr. WARNER, Ms. AYOTTE, and Mrs. ERNST) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

JUNE 20, 2016

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]**A BILL**

To improve the effectiveness of major rules in accomplishing their regulatory objectives by promoting retrospective review, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Smarter Regulations
3 Through Advance Planning and Review Act of 2015” or
4 the “Smarter Regs Act of 2015”.

5 **SEC. 2. INCORPORATING RETROSPECTIVE REVIEW INTO**
6 **NEW MAJOR RULES.**

7 (a) IN GENERAL.—Subchapter II of chapter 5 of title
8 5, United States Code, is amended—

9 (1) in section 551—

10 (A) in paragraph (13), by striking “; and”
11 and inserting a semicolon;

12 (B) in paragraph (14), by striking the pe-
13 riod at the end and inserting a semicolon; and

14 (C) by adding at the end the following:

15 “(15) ‘Administrator’ means the Administrator
16 of the Office of Information and Regulatory Affairs
17 of the Office of Management and Budget; and

18 “(16) ‘major rule’ means any rule that the Ad-
19 ministrator finds has resulted in or is likely to result
20 in—

21 “(A) an annual effect on the economy of
22 \$100,000,000 or more;

23 “(B) a major increase in costs or prices for
24 consumers, individual industries, Federal,
25 State, or local government agencies, or geo-
26 graphic regions; or

1 “(C) significant adverse effects on competi-
2 tion, employment, investment, productivity, in-
3 novation, or on the ability of United States-
4 based enterprises to compete with foreign-based
5 enterprises in domestic and export markets.”;
6 and

7 (2) in section 553, by adding at the end the fol-
8 lowing:

9 “(f) REGULATION-SPECIFIC FRAMEWORKS.—

10 “(1) IN GENERAL.—Beginning 180 days after
11 the date of enactment of this subsection, when an
12 agency publishes a proposed or final major rule in
13 the Federal Register, the agency shall include a
14 framework for reassessing the major rule under
15 paragraph (2), which shall include—

16 “(A) a clear statement of the regulatory
17 objectives of the major rule, including the soci-
18 etal benefit and cost of the major rule;

19 “(B) the methodology by which the agency
20 plans to analyze the major rule, including
21 metrics by which the agency can measure—

22 “(i) the effectiveness and benefits of
23 the major rule in producing the regulatory
24 objectives of the major rule; and

1 “(ii) the impacts, including any costs,
2 of the major rule on regulated entities;

3 “(C) a plan for gathering data regarding
4 the metrics described in subparagraph (B) on
5 an ongoing basis, or at periodic times, during
6 the implementation of the major rule, including
7 the method by which the agency will invite the
8 public to participate in the review process and
9 seek input from other agencies, taking into ac-
10 count any burden to the public in supplying rel-
11 evant data to agencies; and

12 “(D) a specific time frame, as appropriate
13 to the major rule and not more than 10 years,
14 under which the agency shall conduct the reas-
15 sessment of the major rule in accordance with
16 paragraph (2)(A).

17 “(2) REASSESSMENT.—

18 “(A) IN GENERAL.—Each agency shall as-
19 sess the data collected under paragraph (1)(C),
20 using the methodology set forth in paragraph
21 (1)(B), with respect to a major rule—

22 “(i) to analyze how the actual benefits
23 and costs of the major rule may have var-
24 ied from those anticipated at the time the
25 major rule was issued; and

1 “(ii) to determine whether—

2 “(I) the major rule is accom-
3 plishing its regulatory objective;

4 “(II) the major rule has been
5 rendered unnecessary, taking into
6 consideration—

7 “(aa) changes in the subject
8 area affected by the major rule;
9 and

10 “(bb) whether the major
11 rule overlaps, duplicates, or con-
12 flicts with other rules or, to the
13 extent feasible, State and local
14 government regulations; and

15 “(III) other alternatives to the
16 major rule or modification of the
17 major rule could achieve better results
18 while imposing a smaller burden on
19 society or at a lower cost, taking into
20 consideration any cost already in-
21 curred.

22 “(B) SUBSEQUENT ASSESSMENTS.—If,
23 after a reassessment of a major rule under sub-
24 paragraph (A), an agency determines that the

1 major rule will remain in effect with or without
2 modification, the agency shall—

3 “(i) determine a specific time, as ap-
4 propriate to the major rule and not more
5 than 10 years, under which the agency
6 shall conduct another assessment of the
7 major rule in accordance with subpara-
8 graph (A); and

9 “(ii) if the assessment conducted
10 under clause (i) does not result in a repeal
11 of the major rule, periodically reassess the
12 major rule in accordance with subpara-
13 graph (A) to ensure the major rule con-
14 tinues to meet the regulatory objective.

15 “(C) PUBLICATION.—Not later than 180
16 days after the date on which an agency com-
17 pletes a reassessment of a major rule under
18 subparagraph (A), the agency shall publish a
19 notice of availability of the results of the reas-
20 sessment in the Federal Register, including the
21 specific time for any subsequent assessment of
22 the major rule under subparagraph (B)(i), if
23 applicable.

24 “(3) OMB OVERSIGHT.—The Administrator
25 shall—

1 “(A) issue guidance for agencies regarding
2 the development of the framework under para-
3 graph (1) and the conduct of the reassessments
4 under paragraph (2)(A);

5 “(B) oversee the timely compliance of
6 agencies with this subsection; and

7 “(C) ensure that the results of each reas-
8 sessment conducted under paragraph (2)(A)
9 are—

10 “(i) published promptly on a central-
11 ized Federal website; and

12 “(ii) noticed in the Federal Register
13 in accordance with paragraph (2)(C).

14 “(4) RULE OF CONSTRUCTION.—Nothing in
15 this subsection shall be construed to affect—

16 “(A) the authority of an agency to reassess
17 or modify a major rule of the agency earlier
18 than the end of the time frame specified for the
19 major rule under paragraph (1)(D); or

20 “(B) any other provision of law that re-
21 quires an agency to conduct retrospective re-
22 views of rules issued by the agency.”.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be

1 necessary to carry out the amendments made by sub-
 2 section (a).

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Smarter Regulations*
 5 *Through Advance Planning and Review Act of 2015” or*
 6 *the “Smarter Regs Act of 2015”.*

7 **SEC. 2. INCORPORATING RETROSPECTIVE REVIEW INTO**
 8 **NEW MAJOR RULES.**

9 (a) *IN GENERAL.*—*Subchapter II of chapter 5 of title*
 10 *5, United States Code, is amended—*

11 (1) *in section 551—*

12 (A) *in paragraph (13), by striking “; and”*
 13 *and inserting a semicolon;*

14 (B) *in paragraph (14), by striking the pe-*
 15 *riod at the end and inserting a semicolon; and*

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

17 “(15) ‘Administrator’ means the Administrator
 18 of the Office of Information and Regulatory Affairs of
 19 the Office of Management and Budget; and

20 “(16) ‘major rule’ means any rule that the Ad-
 21 ministrator finds has resulted in or is likely to result
 22 in—

23 “(A) an annual effect on the economy of
 24 \$100,000,000 or more;

1 “(B) a major increase in costs or prices for
2 consumers, individual industries, Federal, State,
3 or local government agencies, or geographic re-
4 gions; or

5 “(C) significant adverse effects on competi-
6 tion, employment, investment, productivity, in-
7 novation, or on the ability of United States-
8 based enterprises to compete with foreign-based
9 enterprises in domestic and export markets.”;
10 and

11 (2) in section 553, by adding at the end the fol-
12 lowing:

13 “(f) MAJOR RULE FRAMEWORKS.—

14 “(1) IN GENERAL.—Beginning 180 days after the
15 date of enactment of this subsection, when an agency
16 publishes in the Federal Register—

17 “(A) a proposed major rule, the agency
18 shall include a potential framework for assessing
19 the major rule, which shall include a general
20 statement of how the agency intends to measure
21 the effectiveness of the major rule; or

22 “(B) a final major rule, the agency shall in-
23 clude a framework for assessing the major rule
24 under paragraph (2), which shall include—

1 “(i) a clear statement of the regulatory
2 objectives of the major rule, including a
3 summary of the societal benefit and cost of
4 the major rule;

5 “(ii) the methodology by which the
6 agency plans to analyze the major rule, in-
7 cluding metrics by which the agency can
8 measure—

9 “(I) the effectiveness and benefits
10 of the major rule in producing the reg-
11 ulatory objectives of the major rule;
12 and

13 “(II) the impacts, including any
14 costs, of the major rule on regulated
15 and other impacted entities;

16 “(iii) a plan for gathering data re-
17 garding the metrics described in clause (ii)
18 on an ongoing basis, or at periodic times,
19 including a method by which the agency
20 will invite the public to participate in the
21 review process and seek input from other
22 agencies; and

23 “(iv) a specific time frame, as appro-
24 priate to the major rule and not more than
25 10 years after the effective date of the major

1 *rule, under which the agency shall conduct*
2 *the assessment of the major rule in accord-*
3 *ance with paragraph (2)(A).*

4 “(2) *ASSESSMENT.*—

5 “(A) *IN GENERAL.*—*Each agency shall as-*
6 *sess the data collected under paragraph*
7 *(1)(B)(iii), using the methodology set forth in*
8 *paragraph (1)(B)(ii) or any other appropriate*
9 *methodology developed after the issuance of a*
10 *final major rule to better determine whether the*
11 *regulatory objective was achieved, with respect to*
12 *a major rule—*

13 “(i) *to analyze how the actual benefits*
14 *and costs of the major rule may have varied*
15 *from those anticipated at the time the major*
16 *rule was issued; and*

17 “(ii) *to determine whether—*

18 “(I) *the major rule is accom-*
19 *plishing its regulatory objective;*

20 “(II) *the major rule has been ren-*
21 *dered unnecessary, taking into consid-*
22 *eration—*

23 “(aa) *changes in the subject*
24 *area affected by the major rule;*
25 *and*

1 “(bb) *whether the major rule*
2 *overlaps, duplicates, or conflicts*
3 *with other rules or, to the extent*
4 *feasible, State and local govern-*
5 *ment regulations;*

6 “(III) *the major rule needs to be*
7 *strengthened in order to accomplish the*
8 *regulatory objective; and*

9 “(IV) *other alternatives to the*
10 *major rule or modification of the*
11 *major rule could better achieve the reg-*
12 *ulatory objective while imposing a*
13 *smaller burden on society or increase*
14 *net benefits, taking into consideration*
15 *any cost already incurred.*

16 “(B) *DIFFERENT METHODOLOGY.—If an*
17 *agency uses a methodology other than the meth-*
18 *odology set forth in paragraph (1)(B)(ii) to as-*
19 *sess data under subparagraph (A), the agency*
20 *shall include as part of the notice required under*
21 *subparagraph (D) an explanation of the changes*
22 *in circumstances that necessitated the use of that*
23 *other methodology.*

24 “(C) *SUBSEQUENT ASSESSMENTS.—*

1 “(i) *IN GENERAL.*—*Except as provided*
2 *in clause (ii), if, after an assessment of a*
3 *major rule under subparagraph (A), an*
4 *agency determines that the major rule will*
5 *remain in effect with or without modifica-*
6 *tion, the agency shall—*

7 “(I) *determine a specific time*
8 *frame, as appropriate to the major rule*
9 *and not more than 10 years after the*
10 *effective date of the major rule, under*
11 *which the agency shall conduct another*
12 *assessment of the major rule in accord-*
13 *ance with subparagraph (A); and*

14 “(II) *if the assessment conducted*
15 *under subclause (I) does not result in*
16 *a repeal of the major rule, periodically*
17 *assess the major rule in accordance*
18 *with subparagraph (A) to ensure the*
19 *major rule continues to meet the regu-*
20 *latory objective.*

21 “(ii) *EXEMPTION.*—*The Administrator*
22 *may exempt an agency from conducting a*
23 *subsequent assessment of a major rule under*
24 *clause (i) if the Administrator determines*
25 *that there is a foreseeable and apparent*

1 *need for the major rule beyond the time*
2 *frame required under clause (i)(I).*

3 “(D) *PUBLICATION.*—*Not later than 180*
4 *days after the date on which an agency completes*
5 *an assessment of a major rule under subpara-*
6 *graph (A), the agency shall publish a notice of*
7 *availability of the results of the assessment in the*
8 *Federal Register, including the specific time*
9 *frame for any subsequent assessment of the major*
10 *rule under subparagraph (C)(i), if applicable.*

11 “(3) *OMB OVERSIGHT.*—*The Administrator*
12 *shall—*

13 “(A) *issue guidance for agencies regarding*
14 *the development of the framework under para-*
15 *graph (1) and the conduct of the assessments*
16 *under paragraph (2)(A);*

17 “(B) *oversee the timely compliance of agen-*
18 *cies with this subsection;*

19 “(C) *ensure that the results of each assess-*
20 *ment conducted under paragraph (2)(A) are—*

21 “(i) *published promptly on a central-*
22 *ized Federal website; and*

23 “(ii) *noticed in the Federal Register in*
24 *accordance with paragraph (2)(D);*

1 “(D) encourage and assist agencies to
2 streamline and coordinate the assessment of
3 major rules with similar or related regulatory
4 objectives;

5 “(E) exempt an agency from including the
6 framework required under paragraph (1)(B)
7 when publishing a final major rule, if the agency
8 did not issue a notice of proposed rule making
9 for the major rule in order to provide a timely
10 response to an emergency or comply with a
11 statutorily imposed deadline, in accordance with
12 paragraph (5)(B); and

13 “(F) extend the deadline specified by an
14 agency for an assessment of a major rule under
15 paragraph (1)(B)(iv) or paragraph (2)(C)(i)(I)
16 for a period of not more than 90 days if the
17 agency justifies why the agency is unable to com-
18 plete the assessment by that deadline.

19 “(4) *RULE OF CONSTRUCTION.*—Nothing in this
20 subsection shall be construed to affect—

21 “(A) the authority of an agency to assess or
22 modify a major rule of the agency earlier than
23 the end of the time frame specified for the major
24 rule under paragraph (1)(B)(iv); or

1 “(B) any other provision of law that re-
2 quires an agency to conduct retrospective reviews
3 of rules issued by the agency.

4 “(5) APPLICABILITY.—

5 “(A) IN GENERAL.—This subsection shall
6 not apply to—

7 “(i) a major rule of an agency—

8 “(I) that the Administrator re-
9 viewed before the date of enactment of
10 this subsection; or

11 “(II) for which the agency is re-
12 quired to conduct a retrospective re-
13 view under any other provision of law
14 that meets or exceeds the requirements
15 of this subsection, as determined by the
16 Administrator;

17 “(ii) interpretative rules, general state-
18 ments of policy, or rules of agency organiza-
19 tion, procedure, or practice; or

20 “(iii) routine and administrative rules.

21 “(B) DIRECT AND INTERIM FINAL MAJOR
22 RULE.—In the case of a major rule of an agency
23 for which the agency is not required to issue a
24 notice of proposed rule making in response to an
25 emergency or a statutorily imposed deadline, the

1 *agency shall publish the framework required*
2 *under paragraph (1)(B) in the Federal Register*
3 *not later than 6 months after the date on which*
4 *the agency publishes the final major rule.*

5 “(6) *JUDICIAL REVIEW.*—

6 “(A) *IN GENERAL.*—*Judicial review of*
7 *agency compliance with this subsection is limited*
8 *to—*

9 “(i) *whether an agency published the*
10 *framework for assessment of a major rule in*
11 *accordance with paragraph (1); or*

12 “(ii) *whether an agency completed and*
13 *published the required assessment of a*
14 *major rule in accordance with subpara-*
15 *graphs (A) and (D) of paragraph (2).*

16 “(B) *REMEDY AVAILABLE.*—*In granting re-*
17 *lief in an action brought under subparagraph*
18 *(A), the court may only issue an order remand-*
19 *ing the major rule to the agency to comply with*
20 *paragraph (1) or subparagraph (A) or (D) of*
21 *paragraph (2), as applicable.*

22 “(C) *EFFECTIVE DATE OF MAJOR RULE.*—
23 *If, in an action brought under subparagraph*
24 *(A)(i), a court determines that the agency did*

1 *not comply, the major rule shall take effect not-*
2 *withstanding any order issued by the court.*

3 “(D) ADMINISTRATOR.—*Any determination,*
4 *action, or inaction of the Administrator shall not*
5 *be subject to judicial review.”.*

6 (b) AUTHORIZATION OF APPROPRIATIONS.—*There are*
7 *authorized to be appropriated such sums as may be nec-*
8 *essary to carry out the amendments made by subsection (a).*

Calendar No. 522

114TH CONGRESS
2^D SESSION

S. 1817

[Report No. 114-282]

A BILL

To improve the effectiveness of major rules in accomplishing their regulatory objectives by promoting retrospective review, and for other purposes.

JUNE 20, 2016

Reported with an amendment