

114TH CONGRESS
1ST SESSION

S. 1818

To amend title 5, United States Code, to reform the rule making process of agencies.

IN THE SENATE OF THE UNITED STATES

JULY 21, 2015

Mr. LANKFORD introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend title 5, United States Code, to reform the rule making process of agencies.

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 “Principled Rulemaking
5 Act of 2015”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) the terms “agency”, “rule”, and “rule mak-
9 ing” have the meanings given those terms in section
10 551 of title 5, United States Code; and

1 (2) the term “regulatory action” means any
 2 substantive action by an agency (normally published
 3 in the Federal Register) that promulgates or is ex-
 4 pected to lead to the promulgation of a final regula-
 5 tion, including notices of inquiry, advance notices of
 6 proposed rule making, and notices of proposed rule
 7 making.

8 **SEC. 3. RULE MAKING CONSIDERATIONS.**

9 Section 553 of title 5, United States Code, is amend-
 10 ed by adding at the end the following:

11 “(f) RULE MAKING CONSIDERATIONS.—

12 “(1) IN GENERAL.—An agency shall only pro-
 13 mulgate a rule under this section that is—

14 “(A) required by law;

15 “(B) necessary to interpret a law; or

16 “(C) made necessary by compelling public
 17 need, such as a material failure of the private
 18 markets to protect or improve the health and
 19 safety of the public, the environment, or the
 20 wellbeing of the people of the United States.

21 “(2) CONSIDERATIONS.—Before promulgating a
 22 rule under this section, an agency shall—

23 “(A) identify and assess the significance of
 24 the problem that the agency intends to address
 25 with the rule, including, where applicable, the

1 failures of private markets or public institutions
2 that warrant new agency action;

3 “(B) consider the legal authority under
4 which the rule may be proposed, including
5 whether a rule making is required by statute,
6 and if so, whether by a specific date, or whether
7 the agency has discretion to commence a rule
8 making;

9 “(C) examine whether existing rules or
10 other laws—

11 “(i) have created or contributed to the
12 problem identified under subparagraph
13 (A); and

14 “(ii) should be modified to achieve the
15 intended regulatory objective more effec-
16 tively;

17 “(D) identify and assess available alter-
18 natives to direct regulation, including by pro-
19 viding—

20 “(i) economic incentives to encourage
21 the desired behavior, such as user fees or
22 marketable permits; or

23 “(ii) information upon which choices
24 may be made by the public;

1 “(E) consider, to the extent reasonable, the
2 degree and nature of the risks posed by various
3 substances or activities within the jurisdiction
4 of the agency;

5 “(F) if after determining that a rule is the
6 best available method of achieving the regu-
7 latory objective, design the rule in the most
8 cost-effective manner to achieve the regulatory
9 objective;

10 “(G) in carrying out subparagraph (F),
11 consider—

12 “(i) incentives for innovation, consist-
13 ency, predictability, flexibility, distributive
14 impacts, and equity; and

15 “(ii) the costs of enforcement and
16 compliance to the Federal Government,
17 regulated entities, and the public;

18 “(H) assess the costs and the benefits of
19 the intended rule and, recognizing that some
20 costs and benefits (including quantifiable and
21 qualitative measures) are difficult to quantify—

22 “(i) propose or adopt a rule only upon
23 a reasoned determination that the benefits
24 of the intended rule justify the costs of the
25 rule; and

1 “(ii) select approaches that maximize
2 net benefits, unless a statute requires an-
3 other regulatory approach;

4 “(I) base decisions on the best reasonably
5 obtainable scientific, technical, economic, and
6 other information concerning the need for, and
7 consequences of, the intended rule;

8 “(J) identify and assess alternative forms
9 of regulation and, to the extent feasible, specify
10 performance objectives, and not the behavior or
11 manner of compliance that regulated entities
12 are required to adopt;

13 “(K) seek views of appropriate State, local,
14 and tribal officials before imposing regulatory
15 requirements that may significantly or uniquely
16 affect those governmental entities;

17 “(L) assess the effects of rules on State,
18 local, and tribal governments, including specifi-
19 cally the availability of resources to carry out
20 those mandates, and seek to minimize those
21 burdens that uniquely or significantly affect
22 those governmental entities, consistent with
23 achieving the regulatory objective of the agency;

1 “(M) as appropriate, seek to harmonize
2 agency action with related State, local, and trib-
3 al regulatory and other governmental functions;

4 “(N) avoid the promulgation of a rule that
5 is inconsistent, incompatible, or duplicative with
6 other rules of the agency or those of other
7 agencies;

8 “(O) tailor the rule—

9 “(i) to impose the least burden on so-
10 ciety, including individuals, businesses of
11 differing sizes, and other entities, including
12 small communities and governmental enti-
13 ties; and

14 “(ii) in a manner that is consistent
15 with obtaining the regulatory objective,
16 taking into account, and to the extent
17 practicable, the costs of cumulative rules;
18 and

19 “(P) in order to minimize the potential for
20 uncertainty and litigation arising from such un-
21 certainty, draft the rule in a manner that is
22 simple and easy to understand.”.

23 **SEC. 4. PUBLIC PARTICIPATION.**

24 (a) IN GENERAL.—To promote an open exchange
25 with the public, each agency shall, consistent with section

1 553 of title 5, United States Code, and other applicable
 2 requirements, issue rules through a process that involves
 3 public participation, including—

4 (1) providing the public with an opportunity to
 5 participate in the regulatory process; and

6 (2) to the extent feasible—

7 (A) affording the public a meaningful op-
 8 portunity to submit comments through the
 9 Internet on any proposed rule for a period of
 10 not less than 60 days;

11 (B) providing, for both proposed and final
 12 rules, timely online access to the rule making
 13 docket of the agency on an easily accessible
 14 Federal website, including relevant scientific
 15 and technical findings, in an open, searchable,
 16 and downloadable format; and

17 (C) providing an opportunity for public
 18 comment on all pertinent parts of the proposed
 19 rule making docket of the agency, including rel-
 20 evant scientific and technical findings.

21 (b) COMMENTS FROM AFFECTED PARTIES.—Before
 22 issuing a notice of proposed rule making, each agency
 23 shall, when feasible and appropriate, seek the views of
 24 those who are likely to be affected by the rule, including

1 those who are likely to benefit from and those who are
2 potentially subject to the rule.

3 **SEC. 5. INTEGRATION AND INNOVATION.**

4 In developing regulatory actions and identifying ap-
5 propriate approaches, each agency shall—

6 (1) attempt to promote coordination, simplifica-
7 tion, and harmonization; and

8 (2) seek to identify, as appropriate, means to
9 achieve regulatory goals that are designed to pro-
10 mote innovation.

11 **SEC. 6. FLEXIBLE APPROACHES.**

12 Where relevant, feasible, and consistent with regu-
13 latory objectives, and to the extent permitted by law, each
14 agency shall identify and consider regulatory approaches
15 that—

16 (1) reduce burdens and maintain flexibility and
17 freedom of choice for the public;

18 (2) include warnings, appropriate default rules,
19 and disclosure requirements; and

20 (3) provide information to the public in a form
21 that is clear and intelligible.

1 **SEC. 7. SCIENCE.**

2 Each agency shall ensure the objectivity of any sci-
3 entific and technological information and processes used
4 to support each regulatory action of the agency.

○