

118TH CONGRESS
2D SESSION

S. 4264

To amend title 5, United States Code, 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

MAY 2, 2024

Ms. SINEMA (for herself, Mr. LANKFORD, Mr. MANCHIN, and Mrs. CAPITO) 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 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Setting Manageable
5 Analysis Requirements in Text Act of 2024” or the
6 “SMART Act of 2024”.

1 **SEC. 2. INCORPORATING RETROSPECTIVE REVIEW INTO**
 2 **NEW MAJOR RULES.**

3 (a) IN GENERAL.—Subchapter II of chapter 5 of title
 4 5, United States Code, is amended—

5 (1) in section 551—

6 (A) in paragraph (13), by striking “and”
 7 at the end;

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

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

11 “(15) ‘Administrator’ means the Administrator
 12 of the Office of Information and Regulatory Affairs
 13 of the Office of Management and Budget established
 14 under section 3503 of title 44 and any successor to
 15 that office; and

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

19 “(A) an annual effect on the economy of
 20 \$100,000,000 or more;

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

25 “(C) significant adverse effects on competi-
 26 tion, employment, investment, productivity, in-

1 novation, health, safety, the environment, or the
2 ability of United States-based enterprises to
3 compete with foreign-based enterprises in do-
4 mestic and export markets.”; and

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

7 “(f) MAJOR RULE FRAMEWORKS.—

8 “(1) IN GENERAL.—On and after the date that
9 is 1 year after the date of enactment of this sub-
10 section—

11 “(A) with respect to a proposed rule pub-
12 lished by an agency in the Federal Register
13 that the agency reasonably expects would meet
14 the definition of a major rule, the agency shall
15 include a potential framework for assessing the
16 implemented rule, which shall include a general
17 statement of how the agency intends to measure
18 the effectiveness of the rule; and

19 “(B) with respect to a final major rule
20 published by an agency in the Federal Register,
21 including a major rule that the agency did not
22 initially reasonably expect would meet the defi-
23 nition of a major rule under subparagraph (A),
24 the agency shall include a framework for assess-

1 ing the major rule under paragraph (2), which
2 shall include—

3 “(i) a statement of the regulatory ob-
4 jectives of the major rule, including a sum-
5 mary of the societal benefit and cost of the
6 major rule;

7 “(ii) the methodology by which the
8 agency plans to analyze the qualitative and
9 quantitative outcomes of the major rule so
10 that the agency can assess—

11 “(I) the effectiveness and bene-
12 fits of the major rule in producing the
13 regulatory objectives of the major
14 rule; and

15 “(II) the effects and costs of the
16 major rule on regulated and other af-
17 fected entities;

18 “(iii) a plan for gathering data, in-
19 cluding public input, regarding the meth-
20 odology described in clause (ii) on an ongo-
21 ing basis or at periodic times; and

22 “(iv) a time frame, as appropriate to
23 the major rule and not more than 10 years
24 after the effective date of the major rule,
25 under which the agency shall conduct the

1 assessment of the major rule in accordance
2 with paragraph (2)(A).

3 “(2) ASSESSMENT.—

4 “(A) IN GENERAL.—Each agency shall as-
5 sess the data gathered under paragraph
6 (1)(B)(iii), using the methodology set forth in
7 paragraph (1)(B)(ii) or any other appropriate
8 methodology developed after the issuance of a
9 final major rule—

10 “(i) to analyze how the actual benefits
11 and costs of the major rule may have var-
12 ied from those anticipated at the time the
13 major rule was issued; and

14 “(ii) to determine whether—

15 “(I) the major rule is accom-
16 plishing the regulatory objective of the
17 major rule;

18 “(II) the major rule has been
19 rendered unnecessary, taking into
20 consideration—

21 “(aa) changes in the subject
22 area affected by the major rule;
23 and

24 “(bb) whether the major
25 rule overlaps with, duplicates, or

1 conflicts with other rules or, to
2 the extent feasible, State and
3 local government regulations;

4 “(III) the major rule needs to be
5 expanded, streamlined, or otherwise
6 modified in order to accomplish the
7 regulatory objective of the major rule;
8 and

9 “(IV) other alternatives to the
10 major rule or a modification of the
11 major rule could better achieve the
12 regulatory objective of the major rule
13 by increasing the benefits of the
14 major rule or imposing a smaller bur-
15 den on society, or both, taking into
16 consideration any changes in the regu-
17 latory environment that may have
18 made the major rule more or less nec-
19 essary or effective, and any cost al-
20 ready incurred.

21 “(B) DIFFERENT METHODOLOGY.—If an
22 agency uses a methodology other than the
23 methodology set forth in paragraph (1)(B)(ii)
24 to assess data under subparagraph (A), the
25 agency shall include notification of the revised

1 methodology and an explanation of the changes
2 in circumstances that necessitated the use of
3 that other methodology as part of the notice re-
4 quired under subparagraph (D).

5 “(C) SUBSEQUENT ASSESSMENTS.—If,
6 after an assessment of a major rule under sub-
7 paragraph (A), an agency determines that the
8 major rule will remain in effect with or without
9 modification, the agency shall, in consultation
10 with the Administrator, include with the assess-
11 ment produced under subparagraph (A) a list of
12 circumstances or events that would necessitate
13 a subsequent review in accordance with sub-
14 paragraph (A) to ensure that the major rule
15 continues to meet the regulatory objective of
16 the major rule.

17 “(D) PUBLICATION.—Not later than 180
18 days after the date on which an agency com-
19 pletes an assessment of a major rule under sub-
20 paragraph (A), the agency shall publish promi-
21 nently on the website of the agency the results
22 of the assessment, including the circumstances
23 or events that would necessitate a subsequent
24 assessment of the major rule under subpara-
25 graph (C).

1 “(3) AGENCY HEAD RESPONSIBILITIES.—The
2 head of each agency shall—

3 “(A) oversee the timely compliance of the
4 agency with this subsection; and

5 “(B) ensure that the results of each as-
6 sessment conducted under paragraph (2) are
7 published promptly in accordance with para-
8 graph (2)(D).

9 “(4) OMB OVERSIGHT.—The Administrator
10 shall—

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

15 “(B) encourage and assist agencies to
16 streamline and coordinate the assessment of
17 major rules with similar or related regulatory
18 objectives;

19 “(C) exempt an agency from including the
20 framework required under paragraph (1)(B)
21 when publishing a final major rule, if—

22 “(i) the agency did not issue a notice
23 of proposed rule making for the major rule
24 in order to provide a timely response to an
25 emergency or comply with a statutorily im-

posed deadline, in accordance with paragraph (6)(B); or

“(ii) the Administrator determines that—

“(I) the major final rule falls within a category of major rules that are routine or periodic in nature, including those issued on an annual basis in order to put in place annual spending programs; or

“(II) for any other reason, the conduct of an assessment would be impracticable, unnecessary, or contrary to the public interest; and

“(D) extend the deadline specified by an agency for an assessment of a major rule under paragraph (1)(B)(iv) or paragraph (2)(C) for a period of not more than 90 days if the agency justifies why the agency is unable to complete the assessment by that deadline.

“(5) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to affect—

“(A) the authority of an agency to assess or modify a major rule of the agency earlier

1 than the end of the time frame specified for the
2 major rule under paragraph (1)(B)(iv); or

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

6 “(6) APPLICABILITY.—

7 “(A) IN GENERAL.—This subsection shall
8 not apply to—

9 “(i) a major rule of an agency—

10 “(I) that the Administrator re-
11 viewed before the date of enactment of
12 this subsection;

13 “(II) for which the agency is re-
14 quired to conduct a retrospective re-
15 view under—

16 “(aa) section 2222 of the
17 Economic Growth and Regu-
18 latory Paperwork Reduction Act
19 of 1996 (12 U.S.C. 3311);

20 “(bb) section 170(d) of the
21 Financial Stability Act of 2010
22 (12 U.S.C. 5370(d)); or

23 “(cc) any other provision of
24 law with requirements that the
25 Administrator determines—

1 “(AA) include robust
2 public participation;

3 “(BB) include signifi-
4 cant agency consideration
5 and analysis of whether the
6 rule is achieving the regu-
7 latory objective of the rule;
8 and

9 “(CC) meet, are sub-
10 stantially similar to, or ex-
11 ceed the requirements of
12 this subsection;

13 “(III) for which the authorizing
14 statute of the rule is subject to peri-
15 odic authorization by Congress not
16 less frequently than once every 10
17 years; or

18 “(IV) for which the authorizing
19 statute of the rule requires the pro-
20 mulgation of a new or revised rule not
21 less frequently than once every 10
22 years; or

23 “(ii) interpretative rules, general
24 statements of policy, or rules of agency or-
25 ganization, procedure, or practice.

“(B) GOOD CAUSE EXEMPTION.—In the case of a major rule for which an agency has not issued a notice of proposed rule making, the agency shall publish the framework required under paragraph (1)(B) in the Federal Register not later than 6 months after the date on which the agency publishes the final major rule.

“(7) JUDICIAL REVIEW.—

“(A) IN GENERAL.—Judicial review of agency compliance with this subsection—

“(i) shall be strictly limited to—

“(I) whether an agency published the framework for assessment of a major rule described in paragraph (1); or

“(II) whether an agency published the assessment or subsequent assessment of a major rule described in subparagraphs (A), (C), and (D) of paragraph (2); and

“(ii) shall not include a substantive review of the framework, assessment, or action of an agency under this subsection.

“(B) REMEDY AVAILABLE.—In granting relief in an action brought under subparagraph

1 (A), a court may only issue an order remanding
 2 the major rule to the agency to comply with
 3 paragraph (1) or subparagraph (A), (C), or (D)
 4 of paragraph (2), as applicable.

5 “(C) EFFECTIVE DATE OF MAJOR RULE.—
 6 If, in an action brought under subparagraph
 7 (A)(i), a court determines that the agency did
 8 not comply, the major rule shall take effect not-
 9 withstanding any order issued by the court.

10 “(D) ADMINISTRATOR.—Any determina-
 11 tion, action, or inaction of the Administrator
 12 shall not be subject to judicial review.”.

13 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 14 are authorized to be appropriated such sums as may be
 15 necessary to carry out the amendments made by sub-
 16 section (a).

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