

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—114th Cong., 1st Sess.**

**S. 1818**

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

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. LANKFORD (for himself, Ms.  
HEITKAMP, and Ms. AYOTTE)

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

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

11 (2) the term “regulatory action”—

1 (A) means any substantive action by an  
2 agency (normally published in the Federal Reg-  
3 ister) that promulgates or is expected to lead to  
4 the promulgation of a final regulation, including  
5 notices of inquiry, advance notices of proposed  
6 rule making, and notices of proposed rule mak-  
7 ing; and

8 (B) does not include an action by an agen-  
9 cy involving—

10 (i) a military or foreign affairs func-  
11 tion of the United States; or

12 (ii) a matter relating to agency man-  
13 agement or personnel or to public property,  
14 loans, grants, benefits, or contracts.

15 **SEC. 3. RULE MAKING CONSIDERATIONS.**

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

18 “(f) **RULE MAKING CONSIDERATIONS.**—

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

21 “(A) required by law;

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

23 “(C) as permitted by law, made necessary  
24 by public need, to protect or improve the health

1 and safety of the public, the environment, or  
2 the wellbeing of the people of the United States.

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

5 “(A) identify and assess the significance of  
6 the problem that the agency intends to address  
7 with the rule;

8 “(B) consider the legal authority under  
9 which the rule may be proposed, including  
10 whether a rule making is required by statute,  
11 and if so, whether by a specific date, or whether  
12 the agency has discretion to commence a rule  
13 making;

14 “(C) where practicable, examine whether  
15 existing rules or other laws, including the cu-  
16 mulative effect of existing rules or other laws—

17 “(i) have created or contributed to the  
18 problem identified under subparagraph  
19 (A); and

20 “(ii) should be modified to achieve the  
21 intended regulatory objective more effec-  
22 tively;

23 “(D) as permitted by statute, identify and  
24 assess available alternatives to direct regulation,  
25 including by providing—



1 flexibility, distributive impacts,  
2 and equity on the regulated enti-  
3 ties and the public; and

4 “(bb) the cost of enforce-  
5 ment and compliance to the Fed-  
6 eral Government, regulated enti-  
7 ties, and the public; and

8 “(II) select approaches that re-  
9 duce burdens and maintain flexibility  
10 and freedom of choice for regulated  
11 entities and the public;

12 “(G) base decisions on the best reasonably  
13 obtainable and publically accessible scientific,  
14 technical, economic, and other information con-  
15 cerning the need for, and consequences of, the  
16 intended rule;

17 “(H) identify and assess alternative forms  
18 of regulation and, to the extent feasible, specify  
19 performance objectives, and not the behavior or  
20 manner of compliance that regulated entities  
21 are required to adopt;

22 “(I) seek views of appropriate State, local,  
23 and tribal officials before imposing regulatory  
24 requirements that may significantly or uniquely  
25 affect those governmental entities;

1           “(J) assess the effects of rules on State,  
2 local, and tribal governments and the private  
3 sector, including specifically the availability of  
4 resources to carry out those mandates, and seek  
5 to minimize those burdens that uniquely or sig-  
6 nificantly affect those governmental entities,  
7 consistent with achieving the regulatory objec-  
8 tive of the agency;

9           “(K) as appropriate, seek to harmonize  
10 agency action with related State, local, and trib-  
11 al regulatory and other governmental functions;

12           “(L) avoid the promulgation of a rule that  
13 is inconsistent, incompatible, or duplicative with  
14 other rules of the agency or those of other  
15 agencies;

16           “(M) tailor the rule—

17           “(i) to maximize benefits while impos-  
18 ing the least possible burden on society, in-  
19 cluding individuals, businesses of differing  
20 sizes, and other entities, including small  
21 communities and governmental entities;  
22 and

23           “(ii) in a manner that is consistent  
24 with obtaining the regulatory objective,  
25 taking into account, and to the greatest ex-

1 tent practicable, the costs of cumulative  
2 rules; and

3 “(N) in order to minimize the potential for  
4 uncertainty and litigation arising from such un-  
5 certainty—

6 “(i) draft the rule in a manner that is  
7 simple and easy to understand; and

8 “(ii) include information to assist with  
9 compliance with the rule, such as warn-  
10 ings, appropriate default rules, and disclo-  
11 sure requirements.

12 “(3) EXCEPTIONS.—This subsection shall not  
13 apply—

14 “(A) to interpretative rules, general state-  
15 ments of policy, or rules of agency organization,  
16 procedures, or practice;

17 “(B) if the Administrator of the Office of  
18 Information and Regulatory Affairs waives the  
19 requirements of this subsection for good cause;  
20 or

21 “(C) if the statute on which a proposed  
22 rule is based specifically exempts a rule from  
23 any of the procedures under this subsection.

24 “(4) JUDICIAL REVIEW.—

1           “(A) IN GENERAL.—Compliance by an  
2 agency with the provisions of this subsection  
3 shall be subject to judicial review only—

4           “(i) in connection with review of final  
5 agency action; and

6           “(ii) in accordance with this para-  
7 graph.

8           “(B) DETERMINATIONS BY ADMINIS-  
9 TRATOR.—Any determination, action, or inac-  
10 tion of the Administrator of the Office of Infor-  
11 mation and Regulatory Affairs under this sub-  
12 section shall not be subject to judicial review.

13           “(C) REVIEW WITH FINAL RULE.—Compli-  
14 ance by an agency with the provisions of this  
15 subsection shall only be subject to judicial re-  
16 view in connection with review of the final rule  
17 to which an analysis, assessment, or other con-  
18 sideration under paragraph (2) applies.

19           “(D) RULE MAKING RECORD.—Each con-  
20 sideration by an agency under paragraph (2)  
21 shall be—

22           “(i) included as part of the rule mak-  
23 ing record for the rule; and

24           “(ii) to the extent relevant, considered  
25 by a court only in determining whether,

1 under the statute granting the rule making  
2 authority to the agency, the final rule is—

3 “(I) arbitrary, capricious, or an  
4 abuse of discretion; or

5 “(II) unsupported by substantial  
6 evidence where the standard is other-  
7 wise provided by law.

8 “(E) SET ASIDE.—If an agency fails to  
9 comply with the requirements under paragraph  
10 (2), a court may, giving due account to preju-  
11 dicial error, hold unlawful and set aside the  
12 agency action.”.

13 **SEC. 4. PUBLIC PARTICIPATION.**

14 (a) IN GENERAL.—To promote an open exchange  
15 with the public, each agency shall, consistent with section  
16 553 of title 5, United States Code, and other applicable  
17 requirements, issue rules through a process that involves  
18 public participation, including—

19 (1) providing the public with a meaningful op-  
20 portunity to participate in the regulatory process;  
21 and

22 (2) to the greatest extent feasible—

23 (A) affording the public a meaningful op-  
24 portunity to submit comments through the

1 Internet on any proposed rule for a period of  
2 not less than 60 days;

3 (B) providing, for both proposed and final  
4 rules, timely online access to the rule making  
5 docket of the agency on an easily accessible  
6 Federal website, including relevant scientific  
7 and technical findings, in an open, searchable,  
8 and downloadable format; and

9 (C) providing an opportunity for public  
10 comment on all pertinent parts of the proposed  
11 rule making docket of the agency, including rel-  
12 evant scientific and technical findings.

13 (b) **COMMENTS FROM AFFECTED PARTIES.**—Before  
14 issuing a notice of proposed rule making, each agency  
15 shall, when feasible and appropriate, seek the views of  
16 those who are likely to be affected by the rule, including  
17 those who are likely to benefit from and those who are  
18 potentially subject to the rule.

19 **SEC. 5. INTEGRATION AND INNOVATION.**

20 In developing regulatory actions and identifying ap-  
21 propriate approaches, each agency shall—

22 (1) attempt to promote coordination, simplifica-  
23 tion, and harmonization; and

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

4 **SEC. 6. SCIENCE.**

5           When issuing a rule under section 553, each agency  
6           shall ensure that any scientific and technological informa-  
7           tion and processes, including models, used to support any  
8           regulatory action of the agency is the best available, by  
9           taking into consideration whether the scientific and tech-  
10          nological information and processes used are objective,  
11          peer-reviewed, reproducible, and publically available.