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2D SESSION

S. 3961

To amend the E-Government Act of 2002 (44 U.S.C. 3501 note) to reform the electronic rulemaking process.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17, 2010

Mr. LIEBERMAN (for himself and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the E-Government Act of 2002 (44 U.S.C. 3501 note) to reform the electronic rulemaking process.

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 “E-Rulemaking Act of
5 2010”.

6 **SEC. 2. FINDING AND PURPOSES.**

7 (a) FINDINGS.—Congress finds the following:

8 (1) Electronic rulemaking allows robust public
9 involvement in the regulatory process and increases
10 transparency of how regulations are developed.

1 (2) Chapter 5 of title 5, United States Code,
2 (commonly referred to as the Administrative Proce-
3 dures Act) codifies the rulemaking process and
4 opens it up to public participation.

5 (3) Progress has been made in the e-rulemaking
6 program of the Federal Government which was a re-
7 quirement in the E-Government Act of 2002 (44
8 U.S.C. 3501 note) including the creation of Regula-
9 tions.gov. However, the systems architecture and im-
10 plementation of the Federal Docket Management
11 System have run into limitations in electronic rule-
12 making.

13 (4) A dedicated, stable appropriation for an en-
14 hanced core system can be leveraged by agencies to
15 bring growth and innovation more effectively than
16 the current agency fee-for-service funding models.

17 (5) Lack of adequate data standardization for
18 key data practices makes it difficult for agencies and
19 the public to fully benefit from a Governmentwide
20 rulemaking database.

21 (6) A reliable, centralized rulemaking database
22 that improves on the current Federal Document
23 Management System architecture would allow agen-
24 cies to share common elements, while supporting

1 interoperable agency applications that reflect a di-
2 versity of rulemaking practices.

3 (b) PURPOSES.—The purposes of this Act are to—

4 (1) establish a framework for governing, man-
5 aging and funding the next stage of the e-rule-
6 making program;

7 (2) enhance the capabilities of the Federal
8 Docket Management System so that it can serve as
9 effective core e-rulemaking support, while allowing
10 the system to grow through innovation to provide for
11 the development of new functions, tools and services,
12 by both agencies and interested entities outside of
13 Government;

14 (3) promote processes for discovering and dis-
15 seminating good e-rulemaking practices and identi-
16 fying and overcoming barriers to the evolution of e-
17 rulemaking; and

18 (4) encourage all Federal entities that partici-
19 pate in the e-rulemaking process to work towards an
20 accessible and interoperable docket management sys-
21 tem.

22 **SEC. 3. GOVERNANCE, MANAGEMENT, AND FUNDING.**

23 (a) IN GENERAL.—Section 206 of the E-Government
24 Act of 2002 (44 U.S.C. 3501 note) is amended—

1 (1) in subsection (b), by striking “To the extent
2 practicable as determined by the agency in consulta-
3 tion with the Director, each” and inserting “Each”;

4 (2) in subsection (c), by striking “To the extent
5 practicable, agencies” and inserting “Agencies”;

6 (3) in subsection (d)—

7 (A) in paragraph (1), by striking “To the
8 extent practicable, as determined by the agency
9 in consultation with the Director, agencies” and
10 inserting “Agencies”; and

11 (B) in paragraph (2), by striking “to the
12 extent practicable, as determined by the agency
13 in consultation with the Director”; and

14 (4) by striking subsection (e) and inserting the
15 following:

16 “(e) INTERAGENCY E-RULEMAKING COMMITTEE AND
17 PROGRAM MANAGEMENT OFFICE.—

18 “(1) ESTABLISHMENT.—Not later than 180
19 days after the date of enactment of the E-Rule-
20 making Act of 2010, the Director shall establish—

21 “(A) the Interagency E-Rulemaking Com-
22 mittee; and

23 “(B) the Program Management Office.

24 “(2) MEMBERSHIP.—

1 “(A) IN GENERAL.—The Interagency E-
2 Rulemaking Committee shall be co-chaired by
3 the Administrator of the Office of Information
4 and Regulatory Affairs and the Administrator
5 of the Office of Electronic Government and
6 shall include senior officers knowledgeable
7 about rulemaking practices from—

8 “(i) the General Services Administra-
9 tion;

10 “(ii) the Office of the Federal Reg-
11 ister;

12 “(iii) the Administrative Conference of
13 the United States;

14 “(iv) agencies designated by the Di-
15 rector that conduct substantial amounts of
16 significant rulemaking;

17 “(v) agencies designated by the Direc-
18 tor that conduct relatively little rule-
19 making;

20 “(vi) independent regulatory agencies
21 (as defined under section 3502 of title 44,
22 United States Code) designated by the Di-
23 rector; and

24 “(vii) other agencies designated by the
25 Director.

1 “(B) LIMITATION.—Members of the Inter-
2 agency E-Rulemaking Committee designated
3 under clauses (iv), (v), and (vi) may not com-
4 prise more than 50 percent of all committee
5 members.

6 “(3) FUNCTIONS.—The Interagency E-Rule-
7 making Committee shall—

8 “(A) assist the Director in establishing a
9 Program Management Office to conduct and
10 oversee the day-to-day operations of the E-
11 Rulemaking Program;

12 “(B) advise the Program Management Of-
13 fice and the Director on the needs and desires
14 of agencies for e-rulemaking capabilities for
15 functionality;

16 “(C) develop recommendations for the Pro-
17 gram Management Office and the Director on
18 e-rulemaking policies and requirements;

19 “(D) assist the Director, and the Program
20 Management Office in the identification, devel-
21 opment, and coordination of e-rulemaking
22 projects and other innovative initiatives to im-
23 prove the Federal Docket Management System;

1 “(E) promote the development and use of
2 common performance measures for agency e-
3 rulemaking resources management;

4 “(F) develop recommendations in consulta-
5 tion with the Public E-Rulemaking Advisory
6 Committee for the online disclosure of rule-
7 making information to federal agencies and to
8 the public, including—

9 “(i) recommendations to ensure that
10 dockets stored in the Federal Docket Man-
11 agement System are consistent, both in
12 content and organization, with the require-
13 ments for electronic rulemaking dockets
14 described under subsection (d);

15 “(ii) recommendations to ensure that
16 information exempted from public disclo-
17 sure under section 552(b) of title 5, United
18 States Code, is not made publicly available;
19 and

20 “(iii) recommendations to ensure that
21 personally identifiable information is pro-
22 tected under section 552(l) of title 5,
23 United States Code.

24 “(f) PUBLIC E-RULEMAKING ADVISORY COM-
25 MITTEE.—

1 “(1) ESTABLISHMENT.—There is established in
2 the executive branch a Public E-Rulemaking Advi-
3 sory Committee (in this subsection referred to as the
4 ‘Advisory Committee’).

5 “(2) MEMBERSHIP.—

6 “(A) IN GENERAL.—The Advisory Com-
7 mittee shall be composed of 20 members who
8 are not Federal employees and who shall—

9 “(i) be jointly appointed by the Ad-
10 ministrator of the Office on Information
11 and Regulatory Affairs and the Adminis-
12 trator of the Office of Electronic Govern-
13 ment using a process which provides for
14 transparency and public input;

15 “(ii) select—

16 “(I) 1 chairperson who is not a
17 Federal officer; and

18 “(II) 1 vice chairperson from the
19 Program Management Office who
20 shall be the designated Federal offi-
21 cer; and

22 “(iii) include—

23 “(I) a minimum of 7 members
24 with demonstrated regulatory policy
25 and practice expertise; and

1 “(II) a minimum of 7 members
2 with demonstrated technology or pub-
3 lic access expertise.

4 “(B) ORGANIZATION.—The Administrator
5 of the Office of Information and Regulatory Af-
6 fairs and the Administrator of the Office of
7 Electronic Government shall—

8 “(i) be responsible for the initial orga-
9 nization of the Advisory Committee;

10 “(ii) assist in the election of co-chair-
11 persons using a process which provides for
12 transparency and public input; and

13 “(iii) designate the General Services
14 Administration to provide staff support to
15 the Advisory Committee.

16 “(3) BROADCAST OF PROCEEDINGS.—To the
17 greatest extent practicable, the General Services Ad-
18 ministration shall make available to the public
19 webcasts and archived footage of all meetings of the
20 Advisory Committee.

21 “(4) FUNCTIONS.—The Advisory Committee
22 shall—

23 “(A) regularly advise the Administrator of
24 the Office on Information and Regulatory Af-
25 fairs, the Administrator of the Office of Elec-

1 tronic Government, and the Administrator of
2 the General Services Administration on the e-
3 rulemaking needs and desires of the various e-
4 rulemaking user communities outside the Fed-
5 eral Government;

6 “(B) engage in public consultation to the
7 maximum extent feasible, including consultation
8 with all interested communities such as public
9 advocacy organizations, academics, and regu-
10 lated entities;

11 “(C) consult with the Interagency E-Rule-
12 making Committee and the Administrative Con-
13 ference of the United States, as necessary;

14 “(D) conduct studies and submit rec-
15 ommendations, as provided under this section,
16 to the Director and Congress;

17 “(E) share effective practices for access to,
18 dissemination of, and retention of regulatory
19 material;

20 “(F) not later than 6 months after estab-
21 lishment, annually thereafter, and upon termi-
22 nation submit a report to the Director, the
23 Committee on Homeland Security and Govern-
24 mental Affairs of the Senate and the Committee

1 on Oversight and Government Reform of the
2 House of Representatives that shall—

3 “(i) identify legal provisions and agen-
4 cy practices that create barriers or obsta-
5 cles to achieving e-rulemaking goals; and

6 “(ii) propose solutions to the barriers
7 or obstacles identified under clause (i).

8 “(5) TERMINATION.—

9 “(A) IN GENERAL.—The Advisory Com-
10 mittee shall terminate 2 years after the date of
11 enactment of the E-Rulemaking Act of 2010.

12 “(B) EXTENSION.—The President may—

13 “(i) extend the Advisory Committee
14 by executive order; and

15 “(ii) make more than 1 extension
16 under this subparagraph for any period as
17 the President may determine.

18 “(6) APPLICATION OF FACa.—The Federal Ad-
19 visory Committee Act (5 U.S.C. App.) shall apply to
20 the Advisory Committee.

21 “(g) ARCHITECTURE.—

22 “(1) IN GENERAL.—The Program Management
23 Office shall collaborate with the Interagency Com-
24 mittee and the Public E-Rulemaking Advisory Com-
25 mittee to achieve significant improvements in the

1 systems architecture for the Federal Docket Man-
2 agement System.

3 “(2) CONTENTS.—The systems architecture de-
4 veloped under this subsection shall—

5 “(A) include well-designed data and tech-
6 nical standards, reinforced by effective quality
7 control tools and protocols in order to achieve
8 an accurate, consistent system that stores all
9 rulemaking data; and

10 “(B) facilitate exchange, retrieval and
11 management of information by agencies and the
12 public.

13 “(3) STANDARDS, PROTOCOLS, AND GUIDE-
14 LINES.—

15 “(A) OFFICE OF MANAGEMENT AND BUDG-
16 ET POLICY.—

17 “(i) POLICY.—The Director shall
18 issue policy regarding standards, data pro-
19 tocols, and related items to be used by
20 agencies when publishing their electronic
21 regulatory dockets.

22 “(ii) GUIDELINES.—Based on the pol-
23 icy issued under clause (i), the Program
24 Management Office shall promulgate
25 guidelines that—

1 “(I) incorporate a widely accept-
2 ed, nonproprietary, searchable, com-
3 puter-readable format for rulemaking
4 data;

5 “(II) improve the quality, trans-
6 parency, consistency, security, and
7 usability of electronic rulemaking sys-
8 tems and data;

9 “(III) ensure interoperability and
10 process standardization, and appro-
11 priate reuse of information;

12 “(IV) create document and
13 metadata models for rulemaking docu-
14 ments that accomplish the standard-
15 ization required for accurate and effi-
16 cient Governmentwide retrieval of in-
17 formation;

18 “(V) integrate standards and
19 guidelines in effect before the date of
20 enactment of the E-Rulemaking Act
21 of 2010 as possible and appropriate,
22 enhancing those standards and guide-
23 lines as necessary;

1 “(VI) can be continually up-
2 graded as technologies and content
3 evolve over time;

4 “(VII) ensure that publicly avail-
5 able online Federal Government rule-
6 making information and services are
7 made more accessible to external Gov-
8 ernment and external search capabili-
9 ties; and

10 “(VIII) are developed in con-
11 sultation with the National Institute
12 of Standards and Technology.

13 “(4) TRANSFER OF DATA.—In collaboration
14 with the Program Management Office, the Director
15 shall establish a process for agencies to conduct au-
16 thorized transfer of data, including bulk transfers,
17 to and from the Federal Docket Management Sys-
18 tem.

19 “(5) PUBLIC REVIEW AND COMMENT.—Before
20 taking effect, the Director and the Program Man-
21 agement Office shall make the standards and guide-
22 lines developed under this subsection available to the
23 public for review and comment.

24 “(6) REVIEW AND UPDATE.—The Director and
25 the Program Management Office shall review the

1 standards and guidelines developed under this sub-
2 section at regular intervals and revise those stand-
3 ards and guidelines as necessary.

4 “(7) INDEPENDENT REGULATORY COMMIS-
5 SIONS.—Each independent regulatory commission
6 that has not migrated to the Federal Docket Man-
7 agement System shall—

8 “(A) take any necessary action to establish
9 interoperability with the Federal Docket Man-
10 agement System; and

11 “(B) ensure that rulemaking materials of
12 that independent regulatory commission can be
13 located by users of the system.

14 “(h) E-RULEMAKING PRACTICE AND INNOVATION.—

15 “(1) ASSESSMENTS.—The Director shall pro-
16 vide for periodic, multi-method usability assessments
17 by users of the systems architecture established
18 under subsection (g).

19 “(2) PRACTICES.—After consulting with public
20 stakeholders and the Public E-Rulemaking Advisory
21 Committee, the Interagency E-Rulemaking Com-
22 mittee shall make recommendations to the Adminis-
23 trator of the Office of Information and Regulatory
24 Affairs regarding current and emerging practices
25 that—

1 “(A) enhance online accessibility and man-
2 ageability of rulemaking information;

3 “(B) promote informed and effective public
4 participation; and

5 “(C) harness technology to improve rule
6 formation and implementation.

7 “(3) OFFICE OF MANAGEMENT AND BUDGET.—
8 Based on the recommendations under paragraph (2),
9 the Director shall—

10 “(A) identify clear performance objectives
11 and timelines for action by the agency to ensure
12 that all rulemaking and docket materials are
13 available electronically;

14 “(B) provide to the Public E-Rulemaking
15 Advisory Committee any records or data on the
16 management, functionality, and performance of
17 the systems architecture and all component
18 parts developed under subsection (g), as nec-
19 essary for forming recommendations under sub-
20 section (f); and

21 “(C) identify innovative projects that are
22 developed under the standards, protocol, and
23 guidelines under subsection (g).

24 “(i) REPORTING.—

1 “(1) IN GENERAL.—Not later than March 1 of
2 each year, the Director, in consultation with the
3 Program Management Office, shall submit an e-rule-
4 making status report to—

5 “(A) the Committee on Homeland Security
6 and Governmental Affairs of the Senate; and

7 “(B) the Committee on Oversight and Gov-
8 ernment Reform of the House of Representa-
9 tives.

10 “(2) INCLUSION IN STATUS REPORT.—An e-
11 rulemaking status report may be submitted as part
12 of the annual E-Government status report estab-
13 lished under section 3606 of title 44, United States
14 Code.

15 “(3) CONTENTS.—Each report under this sub-
16 section shall contain at a minimum—

17 “(A) the progress of the e-rulemaking ini-
18 tiative;

19 “(B) performance measurements regarding
20 achievement of system and program goals; and

21 “(C) a summary of public participation
22 and collaboration efforts.

23 “(4) STATEMENT OF PROGRESS.—All agencies,
24 including independent regulatory commissions, shall
25 submit to the Director, for inclusion in the annual

1 report under this subsection, a statement describing
2 the agency progress in achieving compliance with the
3 requirements of this Act.

4 “(j) AUTHORIZATION OF APPROPRIATIONS.—

5 “(1) MAINTENANCE, IMPROVEMENT, AND PRO-
6 MOTION.—There are authorized to be appropriated
7 to \$10,000,000 for the maintenance, improvement,
8 and promotion of the e-rulemaking system in accord-
9 ance with this section for each of fiscal years 2011
10 through 2015, and such sums as are necessary for
11 subsequent fiscal years.

12 “(2) INNOVATIONS TO THE SYSTEMS ARCHITEC-
13 TURE.—There are authorized to be appropriated
14 \$1,000,000 for projects identified under subsection
15 (h)(3)(C) for each of fiscal years 2011 through
16 2015, and such sums as are necessary for subse-
17 quent fiscal years.”.

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