

115TH CONGRESS
1ST SESSION

S. 579

To require agencies to publish an advance notice of proposed rule making
for major rules.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2017

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

A BILL

To require agencies to publish an advance notice of proposed
rule making for major rules.

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 “Early Participation
5 in Regulations Act of 2017”.

6 **SEC. 2. ADVANCE NOTICE OF PROPOSED RULE MAKING.**

7 Subchapter II of chapter 5 of title 5, United States
8 Code, is amended—

9 (1) in section 551—

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

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

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

6 “(15) ‘major rule’ means any rule that the Ad-
7 ministrator of the Office of Information and Regu-
8 latory Affairs determines is likely to impose—

9 “(A) an annual effect on the economy of
10 \$100,000,000 or more;

11 “(B) a major increase in costs or prices for
12 consumers, individual industries, Federal,
13 State, local, or tribal government agencies, or
14 geographic regions; or

15 “(C) significant effects on competition, em-
16 ployment, investment, productivity, innovation,
17 or on the ability of United States-based enter-
18 prises to compete with foreign-based enterprises
19 in domestic and export markets; and

20 “(16) the ‘Office of Information and Regulatory
21 Affairs’ means the office established under section
22 3503 of chapter 35 of title 44 and any successor to
23 that office.”; and

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

1 “(f) ADVANCE NOTICE OF PROPOSED RULE MAKING
2 FOR MAJOR RULES.—

3 “(1) IN GENERAL.—Except as provided in para-
4 graph (3), not later than 90 days before the date on
5 which an agency publishes a notice of proposed rule
6 making for a major rule in the Federal Register, the
7 agency shall publish an advance notice of proposed
8 rule making for the major rule in the Federal Reg-
9 ister.

10 “(2) REQUIREMENTS.—An advance notice of
11 proposed rule making published under paragraph (1)
12 shall—

13 “(A) include a written statement identi-
14 fying, at a minimum—

15 “(i) the nature and significance of the
16 problem the agency may address with a
17 major rule, including data and other evi-
18 dence and information on which the agency
19 expects to rely for the proposed major rule;

20 “(ii) a general description of regu-
21 latory alternatives under consideration;

22 “(iii) the legal authority under which
23 a major rule may be proposed, including
24 whether a rule making is required by stat-
25 ute, and if so, whether by a specific date,

1 or whether the agency has discretion to
2 commence a rule making; and

3 “(iv) an achievable objective for the
4 major rule and metrics by which the agen-
5 cy expects to measure progress toward that
6 objective;

7 “(B) solicit written data, views, and argu-
8 ment from interested persons concerning the in-
9 formation and issues addressed in the advance
10 notice; and

11 “(C) provide for a period of not less than
12 60 days for interested persons to submit such
13 written data, views, or argument to the agency.

14 “(3) EXCEPTIONS.—This subsection shall not
15 apply to a major rule if—

16 “(A) the agency proposing the major rule
17 is not required to publish a notice of proposed
18 rule making in the Federal Register for the
19 major rule under subsection (b)(3)(B);

20 “(B) the Administrator of the Office of In-
21 formation and Regulatory Affairs determines
22 that complying with the requirements described
23 in this subsection—

24 “(i) would not serve the public inter-
25 est; or

1 “(ii) would be unduly burdensome and
2 duplicative of processes required by specific
3 statutory requirements as rigorous as
4 those prescribed in paragraph (2); or

5 “(C) the agency proposing the major rule
6 is otherwise specifically exempted by law from
7 the notice and comment rule making procedures
8 under this section.

9 “(4) JUDICIAL REVIEW.—

10 “(A) IN GENERAL.—A determination made
11 by the Administrator of the Office of Informa-
12 tion and Regulatory Affairs in accordance with
13 paragraph (3)(B) shall not be subject to judi-
14 cial review.

15 “(B) ARBITRARY AND CAPRICIOUS.—Any
16 deviation between policies set forth in the writ-
17 ten statement of an agency under paragraph
18 (2)(A) and any final agency action shall not be
19 considered arbitrary, capricious, an abuse of
20 discretion, or otherwise not in accordance with
21 the law under section 706(2)(A).”.

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