

Calendar No. 158

115TH CONGRESS
1ST SESSION**S. 579****[Report No. 115–121]**

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, Ms. HEITKAMP, Mr. HATCH, and Mr. ROBERTS)
introduced the following bill; which was read twice and referred to the
Committee on Homeland Security and Governmental Affairs

JUNE 28, 2017

Reported by Mr. JOHNSON, with amendments

[Omit the part struck through]

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”.

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

2 Subchapter II of chapter 5 of title 5, United States
3 Code, is amended—

4 (1) in section 551—

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

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

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

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

13 “(A) an annual effect on the economy of
14 \$100,000,000 or more;

15 “(B) a major increase in costs or prices for
16 consumers, individual industries, Federal,
17 State, local, or tribal government agencies, or
18 geographic regions; or

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

24 “(16) ~~the~~ ‘Office of Information and Regulatory
25 Affairs’ means the office established under section

1 3503 of chapter 35 of title 44 and any successor to
 2 that office.”; and

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

5 “(f) ADVANCE NOTICE OF PROPOSED RULE MAKING
 6 FOR MAJOR RULES.—

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

14 “(2) REQUIREMENTS.—An advance notice of
 15 proposed rule making published under paragraph (1)
 16 shall—

17 “(A) include a written statement identi-
 18 fying, at a minimum—

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

24 “(ii) a general description of regu-
 25 latory alternatives under consideration;

1 “(iii) the legal authority under which
 2 a major rule may be proposed, including
 3 whether a rule making is required by stat-
 4 ute, and if so, whether by a specific date,
 5 or whether the agency has discretion to
 6 commence a rule making; and

7 “(iv) an achievable objective for the
 8 major rule and metrics by which the agen-
 9 cy expects to measure progress toward that
 10 objective;

11 “(B) solicit written data, views, and argu-
 12 ment from interested persons concerning the in-
 13 formation and issues addressed in the advance
 14 notice; and

15 “(C) provide for a period of not less than
 16 60 days for interested persons to submit such
 17 written data, views, or argument to the agency.

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

20 “(A) the agency proposing the major rule
 21 is not required to publish a notice of proposed
 22 rule making in the Federal Register for the
 23 major rule under subsection (b) ~~(3)~~(B);

24 “(B) the Administrator of the Office of In-
 25 formation and Regulatory Affairs determines

1 that complying with the requirements described
2 in this subsection—

3 “(i) would not serve the public inter-
4 est; or

5 “(ii) would be unduly burdensome and
6 duplicative of processes required by specific
7 statutory requirements as rigorous as
8 those prescribed in paragraph (2); or

9 “(C) the agency proposing the major rule
10 is otherwise specifically exempted by law from
11 the notice and comment rule making procedures
12 under this section.

13 “(4) JUDICIAL REVIEW.—

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

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

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