

Calendar No. 614

114TH CONGRESS
2D SESSION**S. 1820****[Report No. 114-343]**

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

 IN THE SENATE OF THE UNITED STATES

JULY 21, 2015

Mr. LANKFORD (for himself, Ms. HEITKAMP, Ms. AYOTTE, Mrs. ERNST, and
Mr. KIRK) introduced the following bill; which was read twice and re-
ferred to the Committee on Homeland Security and Governmental Affairs

SEPTEMBER 6, 2016

Reported by Mr. JOHNSON, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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 2015”.

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

2 Subchapter H 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)~~ the legal authority under which a
25 major rule may be proposed, including

1 whether a rule making is required by stat-
2 ute, and if so, whether by a specific date,
3 or whether the agency has discretion to
4 commence a rule making; and

5 “~~(iii)~~ an achievable objective for the
6 major rule and metrics by which the agen-
7 cy will measure progress toward that objec-
8 tive;

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

13 “~~(C)~~ provide for a period of not less than
14 60 days for interested persons to submit such
15 written data, views, or argument to the agency.

16 “~~(3)~~ EXCEPTIONS.—This subsection shall not
17 apply to a major rule if—

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

22 “~~(B)~~ the Administrator of the Office of In-
23 formation and Regulatory Affairs determines
24 that the requirements described in this sub-
25 section would not serve the public interest; or

1 ~~“(C) the agency proposing the major rule~~
 2 ~~is otherwise specifically exempted by law from~~
 3 ~~the notice and comment rule making procedures~~
 4 ~~under this section.”.~~

5 **SECTION 1. SHORT TITLE.**

6 *This Act may be cited as the “Early Participation in*
 7 *Regulations Act of 2015”.*

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

9 *Subchapter II of chapter 5 of title 5, United States*
 10 *Code, is amended—*

11 (1) *in section 551—*

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

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

16 (C) *by adding at the end the following:*

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

20 ~~“(A) an annual effect on the economy of~~
 21 ~~\$100,000,000 or more;~~

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

1 “(C) *significant effects on competition, em-*
2 *ployment, investment, productivity, innovation,*
3 *or on the ability of United States-based enter-*
4 *prises to compete with foreign-based enterprises*
5 *in domestic and export markets; and*

6 “(16) the ‘Office of Information and Regulatory
7 Affairs’ means the office established under section
8 3503 of chapter 35 of title 44 and any successor to
9 that office.”; and

10 (2) *in section 553, by adding at the end the fol-*
11 *lowing:*

12 “(f) *ADVANCE NOTICE OF PROPOSED RULE MAKING*
13 *FOR MAJOR RULES.—*

14 “(1) *IN GENERAL.—Except as provided in para-*
15 *graph (3), not later than 90 days before the date on*
16 *which an agency publishes a notice of proposed rule*
17 *making for a major rule in the Federal Register, the*
18 *agency shall publish an advance notice of proposed*
19 *rule making for the major rule in the Federal Reg-*
20 *ister.*

21 “(2) *REQUIREMENTS.—An advance notice of*
22 *proposed rule making published under paragraph (1)*
23 *shall—*

24 “(A) *include a written statement identi-*
25 *fying, at a minimum—*

1 “(i) the nature and significance of the
2 problem the agency may address with a
3 major rule, including data and other evi-
4 dence and information on which the agency
5 expects to rely for the proposed major rule;

6 “(ii) a general description of regu-
7 latory alternatives under consideration;

8 “(iii) the legal authority under which
9 a major rule may be proposed, including
10 whether a rule making is required by stat-
11 ute, and if so, whether by a specific date, or
12 whether the agency has discretion to com-
13 mence a rule making; and

14 “(iv) an achievable objective for the
15 major rule and metrics by which the agency
16 expects to measure progress toward that ob-
17 jective;

18 “(B) solicit written data, views, and argu-
19 ment from interested persons concerning the in-
20 formation and issues addressed in the advance
21 notice; and

22 “(C) provide for a period of not less than 60
23 days for interested persons to submit such writ-
24 ten data, views, or argument to the agency.

1 “(3) *EXCEPTIONS.*—*This subsection shall not*
2 *apply to a major rule if—*

3 “(A) *the agency proposing the major rule is*
4 *not required to publish a notice of proposed rule*
5 *making in the Federal Register for the major*
6 *rule under subsection (b)(3)(B);*

7 “(B) *the Administrator of the Office of In-*
8 *formation and Regulatory Affairs determines*
9 *that complying with the requirements described*
10 *in this subsection—*

11 “(i) *would not serve the public interest;*

12 *or*

13 “(ii) *would be unduly burdensome and*
14 *duplicative of processes required by specific*
15 *statutory requirements as rigorous as those*
16 *prescribed in paragraph (2); or*

17 “(C) *the agency proposing the major rule is*
18 *otherwise specifically exempted by law from the*
19 *notice and comment rule making procedures*
20 *under this section.*

21 “(4) *JUDICIAL REVIEW.*—

22 “(A) *IN GENERAL.*—*A determination made*
23 *by the Administrator of the Office of Information*
24 *and Regulatory Affairs in accordance with para-*

1 *graph (3)(B) shall not be subject to judicial re-*
2 *view.*

3 “(B) *ARBITRARY AND CAPRICIOUS.—Any*
4 *deviation between policies set forth in the written*
5 *statement of an agency under paragraph (2)(A)*
6 *and any final agency action shall not be consid-*
7 *ered arbitrary, capricious, an abuse of discre-*
8 *tion, or otherwise not in accordance with the law*
9 *under section 706(2)(A).”.*

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