

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).”.

○