

116TH CONGRESS
1ST SESSION

S. 1419

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

IN THE SENATE OF THE UNITED STATES

MAY 13, 2019

Mr. LANKFORD (for himself and Ms. SINEMA) 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
rulemaking 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 2019”.

6 **SEC. 2. ADVANCE NOTICE OF PROPOSED RULEMAKING.**

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 health, safety, the environment, or on the abil-
18 ity of United States-based enterprises to com-
19 pete with foreign-based enterprises in domestic
20 and export markets; and

21 “(16) ‘Office of Information and Regulatory Af-
22 fairs’ means the office established under section
23 3503 of title 44 and any successor to that office.”;
24 and

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

3 “(f) ADVANCE NOTICE OF PROPOSED RULEMAKING
4 FOR MAJOR RULES.—

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

12 “(2) REQUIREMENTS.—An advance notice of
13 proposed rulemaking published under paragraph (1)
14 shall—

15 “(A) include a written statement identi-
16 fying, at a minimum—

17 “(i) the nature and significance of the
18 problem the agency may address with a
19 major rule, including any data and other
20 information on which the agency at the
21 time expects to rely for the proposed major
22 rule;

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

1 “(iii) the legal authority under which
2 a major rule may be proposed; and

3 “(iv) an achievable objective for the
4 major rule;

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

9 “(C) provide for a period of not less than
10 60 days for interested persons to submit such
11 written data, views, or argument to the agency.

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

14 “(A) the agency proposing the major rule
15 is not required to publish a notice of proposed
16 rulemaking in the Federal Register for the
17 major rule under subparagraph (A) or (B) of
18 subsection (b); or

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

23 “(i) would not serve the public inter-
24 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).

5 “(4) JUDICIAL REVIEW.—

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

11 “(B) ARBITRARY AND CAPRICIOUS.—Any
12 difference between policies set forth in the writ-
13 ten statement of an agency under paragraph
14 (2)(A) and the notice of proposed rulemaking
15 shall not be reviewable under section
16 706(2)(A).”.

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