

Calendar No. 192

116TH CONGRESS
1ST SESSION

S. 1419

[Report No. 116–88]

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

SEPTEMBER 10, 2019

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 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*”.

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

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

25 “(16) ‘Office of Information and Regulatory Af-
26 fairs’ means the office established under section

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

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

5 “(f) ADVANCE NOTICE OF PROPOSED RULEMAKING
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 rulemaking for the major rule in the Federal Reg-
13 ister.

14 “(2) REQUIREMENTS.—An advance notice of
15 proposed rulemaking 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 any data and other
22 information on which the agency at the
23 time expects to rely for the proposed major
24 rule;

1 “(ii) a general description of regu-
2 latory alternatives under consideration;

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

5 “(iv) an achievable objective for the
6 major rule;

7 “(B) solicit written data, views, and argu-
8 ment from interested persons concerning the in-
9 formation and issues identified 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 rulemaking in the Federal Register for the
19 major rule under subparagraph (A) or (B) of
20 subsection (b); or

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

1 “(i) would not serve the public inter-
2 est; or

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

7 ~~“(4) JUDICIAL REVIEW.—~~

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

13 ~~“(B) ARBITRARY AND CAPRICIOUS.—Any~~
14 ~~difference between policies set forth in the writ-~~
15 ~~ten statement of an agency under paragraph~~
16 ~~(2)(A) and the notice of proposed rulemaking~~
17 ~~shall not be reviewable under section~~
18 ~~706(2)(A).”.~~

19 **SECTION 1. SHORT TITLE.**

20 *This Act may be cited as the “Early Participation in*
21 *Regulations Act of 2019”.*

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

23 *Subchapter II of chapter 5 of title 5, United States*
24 *Code, is amended—*

25 *(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 ministrators 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, State,
13 local, or tribal government agencies, or geo-
14 graphic regions; or

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

21 “(16) ‘Office of Information and Regulatory Af-
22 fairs’ means the office established under section 3503
23 of title 44 and any successor to 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 any data or categories*
18 *of data that the agency has identified as rel-*
19 *evant or that the agency intends to consult*
20 *for the proposed major rule;*

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

23 “(iii) *the legal authority under which*
24 *a major rule may be proposed;*

1 “(B) solicit written data, views, and argu-
2 ment from interested persons concerning the in-
3 formation and issues identified in the advance
4 notice; and

5 “(C) provide for a period of not less than 30
6 days for interested persons to submit such writ-
7 ten data, views, or argument to the agency.

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

10 “(A) the agency proposing the major rule is
11 not required to publish a notice of proposed rule
12 making in the *Federal Register* for the major
13 rule under subparagraph (A) or (B) of subsection
14 (b);

15 “(B) the Administrator of the Office of In-
16 formation and Regulatory Affairs determines
17 that complying with the requirements described
18 in this subsection—

19 “(i) would not serve the public interest;

20 “(ii) would be duplicative of processes
21 as rigorous and effective as those prescribed
22 in paragraph (2) and would be unnecessary
23 to ensure meaningful public participation;
24 or

1 “(iii) would not be practicable due to
2 a statutory or court-imposed deadline; or

3 “(C) the Administrator of the Office of In-
4 formation and Regulatory Affairs determines
5 that the major rule falls within a category of
6 major rules that are routine or periodic in na-
7 ture.

8 “(4) JUDICIAL REVIEW.—

9 “(A) IN GENERAL.—A determination made
10 by the Administrator of the Office of Information
11 and Regulatory Affairs in accordance with sub-
12 paragraph (B) or (C) of paragraph (3) shall not
13 be subject to judicial review.

14 “(B) ARBITRARY AND CAPRICIOUS.—Any
15 difference between policies set forth in the writ-
16 ten statement of an agency under paragraph
17 (2)(A) and the notice of proposed rule making
18 shall not be reviewable under section
19 706(2)(A).”.

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