

117TH CONGRESS
1ST SESSION

S. 2804

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22 (legislative day, SEPTEMBER 21), 2021

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 2021”.

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 health, safety, the environment, or the ability of
18 United States-based enterprises to compete with
19 foreign-based enterprises in domestic and ex-
20 port 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 RULE MAKING
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 rule making for the major rule in the Federal Reg-
11 ister.

12 “(2) REQUIREMENTS.—An advance notice of
13 proposed rule making 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 or cat-
20 egories of data that the agency has identi-
21 fied as relevant or that the agency intends
22 to consult for the proposed major rule;

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

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

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

7 “(C) provide for a period of not less than
8 30 days for interested persons to submit such
9 written data, views, or argument to the agency.

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

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

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

21 “(i) would not serve the public inter-
22 est;

23 “(ii) would be duplicative of processes
24 as rigorous and effective as those pre-
25 scribed in paragraph (2) and would be un-

1 necessary to ensure meaningful public par-
 2 ticipation; or

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

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

10 “(4) JUDICIAL REVIEW.—

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

16 “(B) ARBITRARY AND CAPRICIOUS.—Any
 17 difference between policies set forth in the writ-
 18 ten statement of an agency under paragraph
 19 (2)(A) and the notice of proposed rule making
 20 shall not be reviewable under section
 21 706(2)(A).”.

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