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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Early Participation in Regulations Act of 2017”.

SEC. 2. ADVANCE NOTICE OF PROPOSED RULE MAKING.

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

(1) in section 551—
(A) in paragraph (13), by striking “and” at the end;

(B) in paragraph (14), by striking the period at the end and inserting a semicolon; and

(C) by adding at the end the following:

“(15) ‘major rule’ means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose—

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

“(B) a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions; or

“(C) significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; and

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

(2) in section 553, by adding at the end the following:
“(f) ADVANCE NOTICE OF PROPOSED RULE MAKING FOR MAJOR RULES.—

“(1) IN GENERAL.—Except as provided in paragraph (3), not later than 90 days before the date on which an agency publishes a notice of proposed rule making for a major rule in the Federal Register, the agency shall publish an advance notice of proposed rule making for the major rule in the Federal Register.

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

“(A) include a written statement identifying, at a minimum—

“(i) the nature and significance of the problem the agency may address with a major rule, including data and other evidence and information on which the agency expects to rely for the proposed major rule;

“(ii) a general description of regulatory alternatives under consideration;

“(iii) the legal authority under which a major rule may be proposed, including whether a rule making is required by statute, and if so, whether by a specific date,
or whether the agency has discretion to
commence a rule making; and

“(iv) an achievable objective for the
major rule and metrics by which the agen-
cy expects to measure progress toward that
objective;

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

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

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

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

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

“(i) would not serve the public inter-
est; or
“(ii) would be unduly burdensome and duplicative of processes required by specific statutory requirements as rigorous as those prescribed in paragraph (2); or

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

“(4) JUDICIAL REVIEW.—

“(A) IN GENERAL.—A determination made by the Administrator of the Office of Information and Regulatory Affairs in accordance with paragraph (3)(B) shall not be subject to judicial review.

“(B) ARBITRARY AND CAPRICIOUS.—Any deviation between policies set forth in the written statement of an agency under paragraph (2)(A) and any final agency action shall not be considered arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law under section 706(2)(A).”.

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