

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

S. 1419

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

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. LANKFORD

Viz:

1 Strike all after the enacting clause and insert the fol-

2 lowing:

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 RULE MAKING.**

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

9 (1) in section 551—

10 (A) in paragraph (13), by striking “and”

11 at the end;

1 (B) in paragraph (14), by striking the pe-
2 riod at the end and inserting a semicolon; and

3 (C) by adding at the end the following:

4 “(15) ‘major rule’ means any rule that the Ad-
5 ministrator of the Office of Information and Regu-
6 latory Affairs determines is likely to impose—

7 “(A) an annual effect on the economy of
8 \$100,000,000 or more;

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

13 “(C) significant effects on competition, em-
14 ployment, investment, productivity, innovation,
15 health, safety, the environment, or on the abil-
16 ity of United States-based enterprises to com-
17 pete with foreign-based enterprises in domestic
18 and export markets; and

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

23 (2) in section 553, by adding at the end the fol-
24 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 cat-
18 egories of data that the agency has identi-
19 fied as relevant or that the agency intends
20 to consult for the proposed major rule;

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

24 “(iii) the legal authority under which
25 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
6 30 days for interested persons to submit such
7 written 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
11 is not required to publish a notice of proposed
12 rule making in the Federal Register for the
13 major rule under subparagraph (A) or (B) of
14 subsection (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 inter-
20 est;

21 “(ii) would be duplicative of processes
22 as rigorous and effective as those pre-
23 scribed in paragraph (2) and would be un-
24 necessary to ensure meaningful public par-
25 ticipation; 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 Informa-
11 tion and Regulatory Affairs in accordance with
12 subparagraph (B) or (C) of paragraph (3) shall
13 not 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).”.