

113TH CONGRESS
1ST SESSION

S. 320

To amend chapter 8 of title 5, United States Code, to provide for congressional review of agency guidance documents.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 13, 2013

Mr. JOHANNIS (for himself, Mr. BARRASSO, Mr. PAUL, Ms. COLLINS, Mr. GRASSLEY, Mr. COATS, Mr. JOHNSON of Wisconsin, and Mrs. FISCHER) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend chapter 8 of title 5, United States Code, to provide for congressional review of agency guidance documents.

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 “Closing Regulatory
5 Loopholes Act of 2013”.

1 **SEC. 2. CONGRESSIONAL REVIEW OF AGENCY GUIDANCE**
2 **DOCUMENTS.**

3 (a) DEFINITIONS.—Chapter 8 of title 5, United
4 States Code, is amended by striking section 804 and in-
5 serting the following:

6 **“§ 804. Definitions**

7 “In this chapter—

8 “(1) the term ‘Federal agency’ means an agen-
9 cy, as that term is defined under section 551;

10 “(2) the term ‘guidance document’ means a
11 statement of general applicability and future effect
12 by a Federal agency, other than a regulatory action,
13 that sets forth a policy on a statutory, regulatory, or
14 technical issue or an interpretation of a statutory or
15 regulatory issue;

16 “(3) the term ‘major guidance document’
17 means any guidance document that the Adminis-
18 trator of the Office of Information and Regulatory
19 Affairs of the Office of Management and Budget
20 finds has resulted in or is likely to result in—

21 “(A) an annual effect on the economy of
22 \$100,000,000 or more;

23 “(B) a major increase in costs or prices for
24 consumers, individual industries, Federal,
25 State, or local government agencies, or geo-
26 graphic regions; or

1 “(C) significant adverse effects on competi-
2 tion, employment, investment, productivity, in-
3 novation, or on the ability of United States-
4 based enterprises to compete with foreign-based
5 enterprises in domestic and export markets;

6 “(4) the term ‘major rule’ means—

7 “(A) any rule that the Administrator of
8 the Office of Information and Regulatory Af-
9 fairs of the Office of Management and Budget
10 finds has resulted in or is likely to result in—

11 “(i) an annual effect on the economy
12 of \$100,000,000 or more;

13 “(ii) a major increase in costs or
14 prices for consumers, individual industries,
15 Federal, State, or local government agen-
16 cies, or geographic regions; or

17 “(iii) significant adverse effects on
18 competition, employment, investment, pro-
19 ductivity, innovation, or on the ability of
20 United States-based enterprises to compete
21 with foreign-based enterprises in domestic
22 and export markets; and

23 “(B) does not include any rule promul-
24 gated under the Telecommunications Act of
25 1996 or the amendments made by that Act;

1 “(5) the term ‘regulatory action’ means any
2 substantive action by a Federal agency (normally
3 published in the Federal Register) that promulgates
4 or is expected to lead to the promulgation of a final
5 regulation, including notices of inquiry, advance no-
6 tices of proposed rulemaking, and notices of pro-
7 posed rulemaking; and

8 “(6) the term ‘rule’ has the meaning given the
9 term in section 551, except that the term does not
10 include—

11 “(A) any rule of particular applicability,
12 including a rule that approves or prescribes for
13 the future rates, wages, prices, services, or al-
14 lowances therefor, corporate or financial struc-
15 tures, reorganizations, mergers, or acquisitions
16 thereof, or accounting practices or disclosures
17 bearing on any of the foregoing;

18 “(B) any rule relating to a Federal agency
19 management or personnel; or

20 “(C) any rule of a Federal agency organi-
21 zation, procedure, or practice that does not sub-
22 stantially affect the rights or obligations of non-
23 agency parties.”.

24 (b) APPLICATION TO GUIDANCE DOCUMENTS.—
25 Chapter 8 of title 5, United States Code, is amended—

1 (1) in section 801—

2 (A) in subsection (a)—

3 (i) in paragraph (1)—

4 (I) in subparagraph (A)—

5 (aa) in the matter preceding
6 clause (i), by inserting “or guid-
7 ance document” after “rule”
8 each place it appears;

9 (bb) in clause (i), by insert-
10 ing “or guidance document”
11 after “rule”;

12 (cc) in clause (ii)—

13 (AA) by inserting “or
14 guidance document” after
15 “the rule”; and

16 (BB) by inserting “or
17 major guidance document”
18 after “major rule”; and

19 (dd) in clause (iii), by in-
20 serting “or guidance document”
21 after “rule”;

22 (II) by striking subparagraph (B)

23 and inserting the following:

24 “(B) On the date of the submission of the
25 report under subparagraph (A), the Federal

1 agency promulgating the rule or guidance docu-
2 ment shall submit to the Comptroller General
3 and make available to each House of Con-
4 gress—

5 “(i) in the case of a rule—

6 “(I) a complete copy of the cost-
7 benefit analysis of the rule, if any;

8 “(II) a description of the actions
9 of the Federal agency relevant to sec-
10 tions 603, 604, 605, 607, and 609;
11 and

12 “(III) a description of the actions
13 of the Federal agency relevant to sec-
14 tions 202, 203, 204, and 205 of the
15 Unfunded Mandates Reform Act of
16 1995;

17 “(ii) in the case of a guidance docu-
18 ment, any relevant agency actions; and

19 “(iii) any other relevant information
20 or requirements under any other Act or
21 any relevant Executive order.”; and

22 (III) in subparagraph (C), by in-
23 serting “or guidance document” after
24 “rule”;

1 (ii) in paragraph (2)(A), by inserting
2 “or major guidance document” after
3 “major rule”;

4 (iii) in paragraph (3)—

5 (I) in the matter preceding sub-
6 paragraph (A), by inserting “or major
7 guidance document” after “major
8 rule”; and

9 (II) in subparagraphs (A), (B),
10 and (C), by inserting “or guidance
11 document” after “rule” each place it
12 appears;

13 (iv) in paragraph (4)—

14 (I) by inserting “or major guid-
15 ance document” after “major rule”;
16 and

17 (II) by inserting “or guidance
18 document” after “a rule”; and

19 (v) in paragraph (5), by inserting “or
20 guidance document” after “rule”;

21 (B) in subsections (b), (c), and (d), by in-
22 serting “or guidance document” after “rule”
23 each place it appears; and

1 (C) in subsections (f) and (g), by inserting
2 “or guidance document” after “rule” each place
3 that term appears;

4 (2) in section 802—

5 (A) in subsection (a)—

6 (i) by inserting “in the case of a
7 rule,” after “as follows:”; and

8 (ii) by inserting “or in the case of a
9 guidance document, ‘That Congress dis-
10 approves the guidance document submitted
11 by the ____ relating to ____, and such
12 guidance document shall have no force or
13 effect.’ (The blank spaces being appro-
14 priately filled in)” before the period;

15 (B) in subsection (b)(2)(B), by inserting
16 “or guidance document” after “rule”; and

17 (C) in subsection (e), by inserting “or
18 guidance document” after “rule”;

19 (3) in section 803(a)—

20 (A) by inserting “or guidance document”
21 after “rule”; and

22 (B) by inserting “or guidance document’s”
23 after “rule’s”;

24 (4) in section 807, by inserting “or guidance
25 documents” after “rules”;

1 (5) in section 808—

2 (A) by striking the section heading and in-
3 serting the following:

4 **“§ 808. Effective date of certain rules or guidance**
5 **documents”;**

6 and

7 (B) by inserting “or guidance document”
8 after “rule” each place that term appears; and

9 (6) in the table of sections by striking the item
10 relating to section 808 and inserting the following:

“808. Effective date of certain rules or guidance documents.”.

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