

115TH CONGRESS
1ST SESSION

S. 580

To establish agency procedures for the issuance of guidance documents, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 8, 2017

Mr. LANKFORD introduced the following bill; which was read twice and
referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To establish agency procedures for the issuance of guidance
documents, and for other purposes.

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 “Truth in Regulations
5 Act of 2017”.

6 **SEC. 2. AGENCY STANDARDS FOR GUIDANCE DOCUMENTS.**

7 (a) DEFINITIONS.—In this section:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Office of In-

1 formation and Regulatory Affairs in the Office of
2 Management and Budget.

3 (2) AGENCY.—The term “agency” has the
4 meaning given the term in section 3502 of title 44,
5 United States Code.

6 (3) GUIDANCE DOCUMENT.—The term “guid-
7 ance document”—

8 (A) means an agency statement of general
9 applicability and future effect, other than a reg-
10 ulatory action, that sets forth a policy on a
11 statutory, regulatory, or technical issue or an
12 interpretation of a statutory or regulatory issue;
13 and

14 (B) does not include—

15 (i) a legal advisory opinion for inter-
16 nal executive branch use and not for re-
17 lease (such as Department of Justice Of-
18 fice of Legal Counsel opinions);

19 (ii) a brief or other position taken by
20 an agency in an investigation, pre-litiga-
21 tion, litigation, or other enforcement pro-
22 ceeding;

23 (iii) a speech, editorial, media inter-
24 view, press material, or congressional cor-
25 respondence;

1 (iv) a guidance document that relates
2 to a military or foreign affairs function of
3 the United States (other than a guidance
4 document on procurement or the import or
5 export of non-defense articles and serv-
6 ices);

7 (v) a grant solicitation, warning letter,
8 or case or investigatory letter responding
9 to a complaint involving a fact-specific de-
10 termination;

11 (vi) a purely internal agency policy;

12 (vii) a guidance document that relates
13 to the use, operation, or control of a gov-
14 ernment facility;

15 (viii) an internal guidance document
16 directed solely to other agencies; or

17 (ix) any other category of guidance
18 documents exempted by the head of an
19 agency, in consultation with the Adminis-
20 trator.

21 (4) REGULATION.—The term “regulation”
22 means an agency statement of general applicability
23 and future effect, which the agency intends to have
24 the force and effect of law, that is designed to imple-
25 ment, interpret, or prescribe law or policy or to de-

1 scribe the procedure or practice requirements of an
2 agency.

3 (5) REGULATORY ACTION.—The term “regu-
4 latory action” means any substantive action by an
5 agency (normally published in the Federal Register)
6 that promulgates or is expected to lead to the pro-
7 mulgation of a final regulation, including notices of
8 inquiry, advance notices of inquiry and notices of
9 proposed rule making.

10 (b) APPROVAL PROCEDURES.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), not later than 210 days after the date of
13 enactment of this Act, the head of each agency shall
14 develop or have written procedures for the approval
15 of guidance documents, which shall ensure that the
16 issuance of guidance documents is approved by each
17 appropriate senior agency official.

18 (2) EXCEPTION.—An employee of an agency
19 may not deviate from the requirements of the proce-
20 dures developed pursuant to paragraph (1) unless—

21 (A) the employee has submitted an appro-
22 priate justification to a supervisor who is an ap-
23 propriate senior agency official described para-
24 graph (1) or the head of the agency; and

1 (B) the supervisor or head of the agency
2 has agreed to the deviation.

3 (c) CONTENTS OF GUIDANCE DOCUMENT.—

4 (1) REQUIREMENTS.—Each guidance document
5 issued by an agency shall include the following:

6 (A) The term “guidance” or a functional
7 equivalent of that term.

8 (B) An identification of each agency and
9 office issuing the document.

10 (C) An identification of the activity to
11 which and the person to whom the guidance
12 document applies.

13 (D) The date of issuance.

14 (E) If the document is a revision to a pre-
15 viously issued guidance document, a notation of
16 such and an identification of the document re-
17 placed.

18 (F) The title of the document and any
19 identification number, if applicable.

20 (G) A citation to the statutory provision or
21 regulation to which the document applies or in-
22 terprets.

23 (2) PROHIBITED.—A guidance document may
24 not include mandatory language such as “shall”,
25 “must”, “required”, or “requirement”, unless—

1 (A) the agency is using these words to de-
 2 scribe a statutory or regulatory requirement;

3 (B) the language is addressed to agency
 4 employees; or

5 (C) the prohibition against that mandatory
 6 language prevents agency consideration of a po-
 7 sition advanced by any affected private party.

8 (d) PUBLIC ACCESS AND FEEDBACK FOR GUIDANCE
 9 DOCUMENTS.—

10 (1) INTERNET ACCESS.—

11 (A) LIST REQUIRED.—The head of each
 12 agency shall maintain on the website of the
 13 agency a list of each guidance document in ef-
 14 fect, which shall include the following:

15 (i) The name of each guidance docu-
 16 ment.

17 (ii) Any document identification num-
 18 ber.

19 (iii) The dates of issuance and revi-
 20 sion.

21 (iv) An identification of which docu-
 22 ments have been added, revised, or with-
 23 drawn during the previous year.

24 (B) LINK TO DOCUMENT REQUIRED.—The
 25 head of the agency shall provide a link from the

list described in subparagraph (A) to each such guidance document.

(C) UPDATES TO WEBSITE.—Not later than 30 days after the date on which a guidance document is issued, the head of the agency shall update the list of guidance documents and links described in this paragraph accordingly.

(2) PUBLIC FEEDBACK.—

(A) SUBMISSION OF PUBLIC COMMENTS.—

(i) IN GENERAL.—Not later than 60 days after the date of enactment of this Act, the head of each agency shall establish and prominently display on the website of the agency a means for the public—

(I) to electronically submit comments on any guidance document; and

(II) to electronically submit a request for issuance, reconsideration, modification, or rescission of any guidance document.

(ii) NO RESPONSE REQUIRED.—Any public comment submitted under this paragraph is for the benefit of the agency, and a formal response to any such comment by the agency is not required.

(B) COMPLAINTS BY THE PUBLIC.—The head of each agency shall—

(i) designate one or more offices to receive and address complaints submitted by the public that the agency is not following the procedures in this section or is improperly treating a guidance document as a binding requirement; and

(ii) provide, on the website of the agency, the name and contact information for any office described in clause (i).

(e) NOTICE AND PUBLIC COMMENT FOR GUIDANCE DOCUMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 60 days after the date on which an agency prepares a draft of a guidance document, the agency shall complete the following requirements:

(A) Publish a notice in the Federal Register announcing that the draft document is available.

(B) Post the draft document on the website of the agency and make the draft publicly available in hard copy (or notify the public how the guidance document may be reviewed if

1 not in a format that permits electronic posting
2 with reasonable efforts).

3 (C) Invite public comment on the draft
4 document.

5 (D) Prepare and post on the website of the
6 agency a response-to-comments document.

7 (2) EXEMPTIONS.—Notwithstanding paragraph
8 (1), the head of an agency, in consultation with the
9 Administrator, may designate a guidance document
10 or group of guidance documents as exempt from the
11 requirements of this section for being not feasible or
12 appropriate.

13 (f) EXIGENT CIRCUMSTANCES.—

14 (1) IN GENERAL.—In an imminent threat to
15 public health or safety or similar exigent cir-
16 cumstance exists or when an agency is required by
17 law to act more quickly than the procedures de-
18 scribed in this section allow, the head of the agency
19 shall certify the circumstance to the Administrator
20 as soon as possible and, to the extent practicable,
21 comply with this section.

22 (2) OTHER DEADLINES.—For any guidance
23 document that is governed by a statutory or court-
24 imposed deadline, the agency shall, to the extent
25 practicable, schedule any proceeding for such docu-

1 ment to permit sufficient time to comply with this
2 section.

3 (g) APPLICABILITY.—This section does not affect the
4 authority of an agency to communicate the views of the
5 agency in court or in any other enforcement proceeding.

6 (h) EFFECTIVE DATE.—The requirements of this
7 section shall take effect 180 days after the date of enact-
8 ment of this Act.

9 **SEC. 3. LIMITATIONS ON USE OF INTERIM FINAL RULES.**

10 (a) ENHANCED SHOWING REQUIRED FOR INTERIM
11 FINAL RULES.—Section 553(b)(B) of title 5, United
12 States Code, is amended by striking “for good cause” and
13 all that follows through the period at the end and inserting
14 the following: “determines that an imminent threat to
15 public health or safety or similar exigent circumstance ex-
16 ists.”.

17 (b) REQUIRED PUBLICATION OR SERVICE DATE.—
18 Section 553(d)(3) of title 5, United States Code, is amend-
19 ed to read as follows:

20 “(3) in the case of any rule to which the excep-
21 tion under subsection (b)(B) applies.”.

22 (c) LOOKBACK PERIOD FOR INTERIM FINAL
23 RULES.—Section 553 of title 5, United States Code, is
24 amended by adding at the end the following:

1 “(f) In the case of a rule making in which the excep-
2 tion under subsection (b)(B) was applied, by not later
3 than 18 months after the rule takes effect, the agency
4 shall provide for a period in which interested persons may
5 submit written data, views, or arguments, in the same
6 manner as submissions under subsection (c), shall give
7 such submissions due consideration, and, if appropriate,
8 repeal or amend the rule accordingly.”.

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