

112TH CONGRESS
1ST SESSION

S. 1530

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

SEPTEMBER 8, 2011

Mr. JOHANNIS (for himself, Mr. BARRASSO, Ms. COLLINS, Mr. INHOFE, Ms. SNOWE, Mr. PAUL, Mr. JOHNSON of Wisconsin, Mr. GRASSLEY, and Mr. ENZI) 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 2011”.

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 any agen-
9 cy as that term is defined under section 551(1);

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

1 “(5) the term ‘regulatory action’ means any
2 substantive action by an agency (normally published
3 in the Federal Register) that promulgates or is ex-
4 pected to lead to the promulgation of a final regula-
5 tion, including notices of inquiry, advance notices of
6 proposed rulemaking, and notices of proposed rule-
7 making; and

8 “(6) the term ‘rule’ has the meaning given such
9 term in section 551, except that such 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 agency manage-
19 ment or personnel; or

20 “(C) any rule of agency organization, pro-
21 cedure, or practice that does not substantially
22 affect the rights or obligations of non-agency
23 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)(1)—

3 (i) in subparagraph (A)—

4 (I) by inserting “or guidance docu-
5 ment” after “rule” each place that
6 term appears; and

7 (II) by inserting “or major guid-
8 ance document” after “major rule”;

9 (ii) by striking subparagraph (B) and
10 inserting the following:

11 “(B) On the date of the submission of the
12 report under subparagraph (A), the Federal
13 agency promulgating the rule or guidance docu-
14 ment shall submit to the Comptroller General
15 and make available to each House of Con-
16 gress—

17 “(i) in the case of a rule—

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

20 “(II) the agency’s actions rel-
21 evant to sections 603, 604, 605, 607,
22 and 609;

23 “(III) the agency’s actions rel-
24 evant to sections 202, 203, 204, and

1 205 of the Unfunded Mandates Re-
2 form Act of 1995;

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

5 “(iii) any other relevant information
6 or requirements under any other Act and
7 any relevant Executive orders.”; and

8 (iii) in subparagraph (C), by inserting
9 “or guidance document” after “rule”;

10 (B) in subsection (a) (2), (3), (4), and
11 (5)—

12 (i) by inserting “or guidance docu-
13 ment” after “rule” each place that term
14 appears; and

15 (ii) by inserting “or major guidance
16 document” after “major rule each place
17 that term appears”; and

18 (C) in subsections (b) through (g)—

19 (i) by inserting “or guidance docu-
20 ment” after “rule” each place that term
21 appears; and

22 (ii) by inserting “or major guidance
23 document” after “major rule”; and

24 (2) in section 802—

1 (A) in subsection (a) by inserting “or in
2 the case of a guidance document ‘That Con-
3 gress disapproves the guidance document sub-
4 mitted by the ____ relating to ____, and such
5 guidance document shall have no force or ef-
6 fect.’ (The blank spaces being appropriately
7 filled in)” before the period;

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

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

12 (3) in section 803(a)—

13 (A) by inserting “or guidance document”
14 after “rule”; and

15 (B) by inserting “or guidance document’s”
16 after “rule’s”;

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

19 (5) in section 808—

20 (A) by striking the section heading and in-
21 serting the following:

22 **“§ 808. Effective date of certain rules or guidance**
23 **documents”;**

24 and

1 (B) by inserting “or guidance document”
2 after “rule” each place that term appears; and
3 (6) in the table of sections by striking the item
4 relating to section 808 and inserting the following:
“§808. Effective date of certain rules or guidance documents.”.

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