

113TH CONGRESS  
1ST SESSION

# S. 1029

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents.

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IN THE SENATE OF THE UNITED STATES

MAY 23, 2013

Mr. PORTMAN (for himself, Mr. PRYOR, Ms. COLLINS, Mr. NELSON, Mr. CORNYN, Mr. MANCHIN, Ms. AYOTTE, Mr. KING, and Mr. JOHANNIS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To reform the process by which Federal agencies analyze and formulate new regulations and 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 “Regulatory Account-  
5 ability Act of 2013”.

6 **SEC. 2. DEFINITIONS.**

7 Section 551 of title 5, United States Code, is amend-  
8 ed—

1           (1) in paragraph (13), by striking “and” at the  
2 end;

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

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

6           “(15) ‘guidance’ means an agency statement of  
7 general applicability, other than a rule, that is not  
8 intended to have the force and effect of law but that  
9 sets forth a policy on a statutory, regulatory, or  
10 technical issue or an interpretation of a statutory or  
11 regulatory issue;

12           “(16) ‘high-impact rule’ means any rule that  
13 the Administrator of the Office of Information and  
14 Regulatory Affairs determines is likely to impose a  
15 cost on the economy in any 1 year of  
16 \$1,000,000,000 or more, adjusted annually for infla-  
17 tion;

18           “(17) ‘major rule’ means any rule that the Ad-  
19 ministrator of the Office of Information and Regu-  
20 latory Affairs determines is likely to impose—

21           “(A) a cost on the economy in any 1 year  
22 of \$100,000,000 or more, adjusted annually for  
23 inflation;

24           “(B) a major increase in costs or prices for  
25 consumers, individual industries, Federal,

1 State, local, or tribal government agencies, or  
2 geographic regions; or

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

8 “(18) ‘major guidance’ means guidance that the  
9 Administrator of the Office of Information and Reg-  
10 ulatory Affairs finds is likely to lead to—

11 “(A) a cost on the economy in any 1 year  
12 of \$100,000,000 or more, adjusted annually for  
13 inflation;

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

18 “(C) significant adverse effects on competi-  
19 tion, employment, investment, productivity, in-  
20 novation, or on the ability of United States-  
21 based enterprises to compete with foreign-based  
22 enterprises in domestic and export markets; and

23 “(19) ‘Office of Information and Regulatory Af-  
24 fairs’ means the office established under section  
25 3503 of title 44 and any successor to that office.”.

1 **SEC. 3. RULEMAKING.**

2 Section 553 of title 5, United States Code, is amend-  
3 ed—

4 (1) in subsection (a), by striking “(a) This sec-  
5 tion applies” and inserting “(a) APPLICABILITY.—  
6 This section applies”; and

7 (2) by striking subsections (b) through (e) and  
8 inserting the following:

9 “(b) RULEMAKING CONSIDERATIONS.—In a rule-  
10 making, an agency shall consider, in addition to other ap-  
11 plicable considerations, the following:

12 “(1) The legal authority under which a rule  
13 may be proposed, including whether rulemaking is  
14 required by statute or is within the discretion of the  
15 agency.

16 “(2) The nature and significance of the problem  
17 the agency intends to address with a rule.

18 “(3) Whether existing Federal laws or rules  
19 have created or contributed to the problem the agen-  
20 cy may address with a rule and, if so, whether those  
21 Federal laws or rules could be amended or rescinded  
22 to address the problem in whole or in part.

23 “(4) A reasonable number of alternatives for a  
24 new rule, including any substantial alternatives or  
25 other responses identified by interested persons.

1           “(5) For any major rule or high-impact rule,  
2           the potential costs and benefits associated with po-  
3           tential alternative rules and other responses consid-  
4           ered under paragraph (4), including an analysis of—

5                   “(A) the nature and degree of risks ad-  
6                   dressed by the rule and the countervailing risks  
7                   that might be posed by agency action;

8                   “(B) direct, indirect, and cumulative costs  
9                   and benefits; and

10                   “(C) estimated impacts on jobs, competi-  
11                   tiveness, and productivity.

12           “(c) INITIATION OF RULEMAKING.—

13                   “(1) NOTICE FOR MAJOR AND HIGH-IMPACT  
14                   RULES.—When an agency determines to initiate a  
15                   rulemaking that may result in a major rule or high-  
16                   impact rule, the agency shall—

17                   “(A) establish an electronic docket for that  
18                   rulemaking, which may have a physical counter-  
19                   part; and

20                   “(B) publish a notice of initiation of rule-  
21                   making in the Federal Register, which shall—

22                           “(i) briefly describe the subject, the  
23                           problem to be solved, and the objectives of  
24                           the rule;

1           “(ii) reference the legal authority  
2           under which the rule would be proposed;

3           “(iii) invite interested persons to pro-  
4           pose alternatives for accomplishing the ob-  
5           jectives of the agency in the most effective  
6           manner and with the lowest cost; and

7           “(iv) indicate how interested persons  
8           may submit written material for the dock-  
9           et.

10           “(2) ACCESSIBILITY.—All information provided  
11           to the agency under paragraph (1) shall be promptly  
12           placed in the docket and made accessible to the pub-  
13           lic.

14           “(d) NOTICE OF PROPOSED RULEMAKING.—

15           “(1) IN GENERAL.—If an agency determines  
16           that the objectives of the agency require the agency  
17           to issue a rule, the agency shall notify the Adminis-  
18           trator of the Office of Information and Regulatory  
19           Affairs and publish a notice of proposed rulemaking  
20           in the Federal Register, which shall include—

21           “(A) a statement of the time, place, and  
22           nature of any public rulemaking proceedings;

23           “(B) reference to the legal authority under  
24           which the rule is proposed;

25           “(C) the text of the proposed rule;

1           “(D) a summary of information known to  
2           the agency concerning the considerations speci-  
3           fied in subsection (b); and

4           “(E) for any major rule or high impact-  
5           rule—

6                   “(i) a reasoned preliminary deter-  
7                   mination that the benefits of the proposed  
8                   rule justify the costs of the proposed rule;  
9                   and

10                   “(ii) a discussion of—

11                           “(I) the costs and benefits of al-  
12                           ternatives considered by the agency  
13                           under subsection (b), as determined  
14                           by the agency at its discretion or pro-  
15                           vided under subsection (c) by a pro-  
16                           ponent of an alternative;

17                           “(II) whether those alternatives  
18                           meet relevant statutory objectives; and

19                           “(III) the reasons why the agen-  
20                           cy did not propose any of those alter-  
21                           natives.

22           “(2) ACCESSIBILITY.—Not later than the date  
23           of publication of the notice of proposed rulemaking  
24           by an agency under paragraph (1), all data, studies,  
25           models, and other information considered by the

1 agency, and actions by the agency to obtain informa-  
2 tion, in connection with the determination of the  
3 agency to propose the rule, shall be placed in the  
4 docket for the proposed rule and made accessible to  
5 the public.

6 “(3) PUBLIC COMMENT.—

7 “(A) After publishing a notice of proposed  
8 rulemaking, the agency shall provide interested  
9 persons an opportunity to participate in the  
10 rulemaking through the submission of written  
11 material, data, views, or arguments with or  
12 without opportunity for oral presentation, ex-  
13 cept that—

14 “(i) if a public hearing is convened  
15 under subsection (e), reasonable oppor-  
16 tunity for oral presentation shall be pro-  
17 vided at the public hearing under the re-  
18 quirements of subsection (e); and

19 “(ii) when, other than under sub-  
20 section (e), a rule is required by statute or  
21 at the discretion of the agency to be made  
22 on the record after opportunity for an  
23 agency hearing, sections 556 and 557 shall  
24 apply, and the petition procedures of sub-  
25 section (e) shall not apply.



1           “(B) The agency shall provide not less  
2 than 60 days, or 90 days in the case of a pro-  
3 posed major rule or proposed high-impact rule,  
4 for interested persons to submit written mate-  
5 rial, data, views, or arguments.

6           “(4) EXPIRATION OF NOTICE.—

7           “(A) Except as provided in subparagraph  
8 (B), a notice of proposed rulemaking shall, 2  
9 years after the date on which the notice is pub-  
10 lished in the Federal Register, be considered as  
11 expired and may not be used to satisfy the re-  
12 quirements of subsection (d).

13           “(B) An agency may, at the sole discretion  
14 of the agency, extend the expiration of a notice  
15 of proposed rulemaking under subparagraph  
16 (A) for a 1 year period by publishing a supple-  
17 mental notice in the Federal Register explaining  
18 why the agency requires additional time to com-  
19 plete the rulemaking.

20           “(e) PUBLIC HEARING FOR HIGH-IMPACT RULES.—

21           “(1) PETITION FOR PUBLIC HEARING.—

22           “(A)(i) Before the close of the comment  
23 period for any proposed high-impact rule, any  
24 interested person may petition the agency to

1 hold a public hearing in accordance with this  
2 subsection.

3 “(ii) Not later than 30 days after receipt  
4 of a petition made pursuant to clause (i), the  
5 agency shall grant the petition if the petition  
6 shows that—

7 “(I) the proposed rule is based on  
8 conclusions with respect to one or more  
9 specific scientific, technical, economic or  
10 other complex factual issues that are genu-  
11 inely disputed; and

12 “(II) the resolution of those disputed  
13 factual issues would likely have an effect  
14 on the costs and benefits of the proposed  
15 rule.

16 “(B) If the agency denies a petition under  
17 this subsection in whole or in part, it shall in-  
18 clude in the rulemaking record an explanation  
19 for the denial sufficient for judicial review, in-  
20 cluding—

21 “(i) findings by the agency that there  
22 is no genuine dispute as to the factual  
23 issues raised by the petition; or

24 “(ii) a reasoned determination by the  
25 agency that the factual issues raised by the

1           petition, even if subject to genuine dispute,  
2           will not have an effect on the costs and  
3           benefits of the proposed rule.

4           “(2) NOTICE OF HEARING.—Not later than 45  
5           days before any hearing held under this subsection,  
6           the agency shall publish in the Federal Register a  
7           notice specifying the proposed rule to be considered  
8           at the hearing and the factual issues to be consid-  
9           ered at the hearing.

10          “(3) HEARING PROCEDURE.—

11           “(A) A hearing held under this subsection  
12           shall be limited to the specific factual issues  
13           raised in the petition or petitions granted in  
14           whole or in part under paragraph (1) and any  
15           other factual issues the resolution of which the  
16           agency, in its discretion, determines will ad-  
17           vance its consideration of the proposed rule.

18           “(B)(i) Except as otherwise provided by  
19           statute, the proponent of the rule has the bur-  
20           den of proof in a hearing held under this sub-  
21           section. Any documentary or oral evidence may  
22           be received, but the agency as a matter of pol-  
23           icy shall provide for the exclusion of immaterial  
24           or unduly repetitious evidence.

1           “(ii) To govern hearings held under this  
2 subsection, each agency shall adopt rules that  
3 provide for—

4                   “(I) the appointment of an agency of-  
5 ficial or administrative law judge to preside  
6 at the hearing;

7                   “(II) the presentation by interested  
8 parties of relevant documentary or oral evi-  
9 dence, unless the evidence is immaterial or  
10 unduly repetitious;

11                   “(III) a reasonable and adequate op-  
12 portunity for cross-examination by inter-  
13 ested parties concerning genuinely disputed  
14 factual issues raised by the petition, pro-  
15 vided that in the case of multiple inter-  
16 ested parties with the same or similar in-  
17 terests, the agency may require the use of  
18 common counsel where the common coun-  
19 sel may adequately represent the interests  
20 that will be significantly affected by the  
21 proposed rule; and

22                   “(IV) the provision of fees and costs  
23 under the circumstances described in sec-  
24 tion 6(c)(4) of the Toxic Substances Con-  
25 trol Act (15 U.S.C. 2605(c)(4)).

1           “(C) The transcript of testimony and ex-  
2           hibits, together with all papers and requests  
3           filed in the hearing, shall constitute the exclu-  
4           sive record for decision of the factual issues ad-  
5           dressed in a hearing held under this subsection.

6           “(4) PETITION FOR PUBLIC HEARING FOR  
7           MAJOR RULES.—In the case of any major rule, any  
8           interested person may petition for a hearing under  
9           this subsection on the grounds and within the time  
10          limitation set forth in paragraph (1). The agency  
11          may deny the petition if the agency reasonably de-  
12          termines that a hearing would not advance the con-  
13          sideration of the proposed rule by the agency or  
14          would, in light of the need for agency action, unrea-  
15          sonably delay completion of the rulemaking. The pe-  
16          tition and the decision of the agency with respect to  
17          the petition shall be included in the rulemaking  
18          record.

19          “(5) JUDICIAL REVIEW.—

20                 “(A) Failure to petition for a hearing  
21                 under this subsection shall not preclude judicial  
22                 review of any claim that could have been raised  
23                 in the hearing petition or at the hearing.

24                 “(B) There shall be no judicial review of  
25                 the disposition of a petition by an agency under

1           this subsection until judicial review of the final  
2           action of the agency.

3           “(f) FINAL RULES.—

4           “(1) COST OF MAJOR OR HIGH-IMPACT RULE.—

5                   “(A) Except as provided in subparagraph  
6                   (B), in a rulemaking for a major rule or high-  
7                   impact rule, the agency shall adopt the least  
8                   costly rule considered during the rulemaking  
9                   that meets relevant statutory objectives.

10                   “(B) The agency may adopt a rule that is  
11                   more costly than the least costly alternative  
12                   that would achieve the relevant statutory objec-  
13                   tives only if—

14                           “(i) the additional benefits of the  
15                           more costly rule justify its additional costs;  
16                           and

17                           “(ii) the agency explains why the  
18                           agency adopted a rule that is more costly  
19                           than the least costly alternative, based on  
20                           interests that are within the scope of the  
21                           statutory provision authorizing the rule.

22           “(2) PUBLICATION OF NOTICE OF FINAL RULE-  
23           MAKING.—When the agency adopts a final rule, the  
24           agency shall publish a notice of final rulemaking in  
25           the Federal Register, which shall include—

1           “(A) a concise, general statement of the  
2 basis and purpose of the rule;

3           “(B) a reasoned determination by the  
4 agency regarding the considerations specified in  
5 subsection (c);

6           “(C) in a rulemaking for a major rule or  
7 high-impact rule, a reasoned determination by  
8 the agency that the benefits of the rule advance  
9 the relevant statutory objectives and justify the  
10 costs of the rule;

11           “(D) in a rulemaking for a major rule or  
12 high-impact rule, a reasoned determination by  
13 the agency that—

14           “(i) no alternative considered would  
15 achieve the relevant statutory objectives at  
16 a lower cost than the rule; or

17           “(ii) the adoption by the agency of a  
18 more costly rule complies with paragraph  
19 (2)(B); and

20           “(E) a response to each significant issue  
21 raised in the comments on the proposed rule.

22           “(3) INFORMATION QUALITY.—If an agency  
23 rulemaking rests upon scientific, technical, or eco-  
24 nomic information, the agency shall adopt a rule

1 only on the basis of the best available scientific,  
2 technical, or economic information.

3 “(4) ACCESSIBILITY.—Not later than the date  
4 of publication of the rule, all data, studies, models,  
5 and other information considered by the agency, and  
6 actions by the agency to obtain information in con-  
7 nection with its adoption of the rule, shall be placed  
8 in the docket for the rule and made accessible to the  
9 public.

10 “(5) RULES ADOPTED AT THE END OF A PRESI-  
11 DENTIAL ADMINISTRATION.—

12 “(A) During the 60-day period beginning  
13 on a transitional inauguration day (as defined  
14 in section 3349a), with respect to any final rule  
15 that had been placed on file for public inspec-  
16 tion by the Office of the Federal Register or  
17 published in the Federal Register as of the date  
18 of the inauguration, but which had not yet be-  
19 come effective by the date of the inauguration,  
20 the agency issuing the rule may, by order, delay  
21 the effective date of the rule for not more than  
22 90 days for the purpose of obtaining public  
23 comment on whether the rule should be amend-  
24 ed or rescinded or its effective date further de-  
25 layed.



1           “(B) If an agency delays the effective date  
2           of a rule under subparagraph (A), the agency  
3           shall give the public not less than 30 days to  
4           submit comments.

5           “(g) APPLICABILITY OF THIS SECTION.—

6           “(1) IN GENERAL.—Except as otherwise pro-  
7           vided by law, this section does not apply to guidance  
8           or rules of agency organization, procedure, or prac-  
9           tice.

10          “(2) ADOPTION OF INTERIM RULES.—

11           “(A) If an agency for good cause finds,  
12           and incorporates the finding and a brief state-  
13           ment of reasons for the finding in the rule  
14           issued, that compliance with subsection (c), (d),  
15           or (e) or requirements to render final deter-  
16           minations under subsection (f) before the  
17           issuance of an interim rule is unnecessary, such  
18           subsections and requirements under subsection  
19           (f) shall not apply and the agency may issue a  
20           final rule.

21           “(B) If an agency for good cause finds,  
22           and incorporates the finding and a brief state-  
23           ment of reasons for the finding in the rule  
24           issued, that compliance with subsection (c), (d),  
25           or (e) or requirements to render final deter-

1           minations under subsection (f) before the  
2           issuance of an interim rule is impracticable or  
3           contrary to the public interest, such subsections  
4           and requirements under subsection (f) shall not  
5           apply to the adoption of an interim rule by the  
6           agency.

7           “(C) If, following compliance with subpara-  
8           graph (B), an agency adopts an interim rule,  
9           the agency shall commence proceedings that  
10          fully comply with subsections (c) through (f)  
11          immediately upon publication of the interim  
12          rule. Not less than 270 days from publication  
13          of the interim rule, or 18 months in the case  
14          of a major rule or high-impact rule, the agency  
15          shall complete rulemaking in accordance with  
16          subsections (c) through (f) and take final action  
17          to adopt a final rule or rescind the interim rule.  
18          If the agency fails to take timely final action  
19          under this subparagraph, the interim rule shall  
20          cease to have the effect of law.

21          “(h) DATE OF PUBLICATION OF RULE.—A rule shall  
22          be published not less than 30 days before the effective date  
23          of the rule, except—

24                 “(1) for a rule that grants or recognizes an ex-  
25                 emption or relieves a restriction;

1           “(2) for guidance; or

2           “(3) as otherwise provided by an agency for  
3 good cause and as published with the rule.

4           “(i) RIGHT TO PETITION AND REVIEW OF RULES.—

5           “(1) Each agency shall give interested persons  
6 the right to petition for the issuance, amendment, or  
7 repeal of a rule.

8           “(2) Each agency shall, on a continuing basis,  
9 invite interested persons to submit, by electronic  
10 means, suggestions for rules that warrant retrospec-  
11 tive review and possible modification or repeal.

12           “(j) RULEMAKING GUIDELINES.—

13           “(1) ASSESSMENT OF RULES.—

14           “(A) The Administrator of the Office of  
15 Information and Regulatory Affairs (in this  
16 subsection referred to as the ‘Administrator’)  
17 shall establish guidelines for the assessment, in-  
18 cluding quantitative and qualitative assessment,  
19 of—

20                   “(i) the costs and benefits of proposed  
21 and final rules;

22                   “(ii) other economic issues that are  
23 relevant to rulemaking under this section  
24 or other sections of this title; and

1                   “(iii) risk assessments that are rel-  
2                   evant to rulemaking under this section and  
3                   other sections of this title.

4                   “(B) The rigor of cost-benefit analysis re-  
5                   quired by the guidelines established under sub-  
6                   paragraph (A) shall be commensurate, as deter-  
7                   mined by the Administrator, with the economic  
8                   impact of the rule. Guidelines for risk assess-  
9                   ment shall include criteria for selecting studies  
10                  and models, evaluating and weighing evidence,  
11                  and conducting peer reviews.

12                  “(C) The Administrator shall regularly up-  
13                  date guidelines established under subparagraph  
14                  (A) to enable agencies to use the best available  
15                  techniques to quantify and evaluate present and  
16                  future benefits, costs, other economic issues,  
17                  and risks as objectively and accurately as prac-  
18                  ticable.

19                  “(2) SIMPLIFICATION OF RULES.—The Admin-  
20                  istrator may issue guidelines to promote coordina-  
21                  tion, simplification, and harmonization of agency  
22                  rules during the rulemaking process. The guidelines  
23                  shall advise each agency to avoid regulations that  
24                  are inconsistent or incompatible with, or duplicative  
25                  of, other regulations of the agency and those of

1 other Federal agencies, and to draft its regulations  
2 to be simple and easy to understand, with the goal  
3 of minimizing the potential for uncertainty and liti-  
4 gation arising from the uncertainty.

5 “(3) CONSISTENCY IN RULEMAKING.—

6 “(A) To promote consistency in Federal  
7 rulemaking, the Administrator shall—

8 “(i) issue guidelines to ensure that  
9 rulemaking conducted in whole or in part  
10 under procedures specified in provisions of  
11 law other than those under this subchapter  
12 conform with the procedures set forth in  
13 this section to the fullest extent allowed by  
14 law; and

15 “(ii) issue guidelines for the conduct  
16 of hearings under subsection (e), which  
17 shall provide a reasonable opportunity for  
18 cross-examination.

19 “(B) Each agency shall adopt regulations  
20 for the conduct of hearings consistent with the  
21 guidelines issued under this paragraph.

22 “(k) EXEMPTION FOR MONETARY POLICY.—Nothing  
23 in subsection (b)(5), (d)(1)(E), (e), (f)(1), (f)(2)(C), or  
24 (f)(2)(D) shall apply to a rulemaking that concerns mone-  
25 tary policy proposed or implemented by the Board of Gov-

1 errors of the Federal Reserve System or the Federal Open  
2 Market Committee.”.

3 **SEC. 4. SCOPE OF REVIEW.**

4 Section 706 of title 5, United States Code is amend-  
5 ed—

6 (1) by striking “To the extent necessary” and  
7 inserting “IN GENERAL.—To the extent necessary”;  
8 and

9 (2) by adding at the end the following:

10 “(b) JUDICIAL REVIEW.—The determination of  
11 whether a rule is a major rule within the meaning of sub-  
12 paragraphs (B) and (C) of section 551(17) shall not be  
13 subject to judicial review.

14 “(c) STATEMENT OF POLICY.—Agency guidance that  
15 does not interpret a statute or regulation shall be review-  
16 able only under subsection (a)(2)(D).

17 “(d) AGENCY INTERPRETATION OF RULES.—The  
18 weight that a court shall give an interpretation by an  
19 agency of its own rule shall depend on the thoroughness  
20 evident in its consideration, the validity of its reasoning,  
21 and its consistency with earlier and later pronouncements.

22 “(e) STANDARD OF REVIEW.—A court shall review—

23 “(1) the denial of a petition by an agency under  
24 section 553(e) for whether the denial was based on  
25 substantial evidence; and

1           “(2) any petition for review of a high-impact  
2           rule under the substantial evidence standard, regard-  
3           less of whether a hearing was held under section  
4           553(e).”.

5 **SEC. 5. AGENCY GUIDANCE; PROCEDURES TO ISSUE MAJOR**  
6                   **GUIDANCE; PRESIDENTIAL AUTHORITY TO**  
7                   **ISSUE GUIDELINES FOR ISSUANCE OF GUID-**  
8                   **ANCE.**

9           Section 553 of title 5, United States Code, as amend-  
10          ed by this Act, is amended by adding at the end the fol-  
11          lowing:

12          “(1) AGENCY GUIDANCE; PROCEDURES TO ISSUE  
13          MAJOR GUIDANCE; AUTHORITY TO ISSUE GUIDELINES  
14          FOR ISSUANCE OF GUIDANCE.—

15                 “(1) Agency guidance shall—

16                         “(A) not be used by an agency to foreclose  
17                         consideration of issues as to which the docu-  
18                         ment expresses a conclusion;

19                         “(B) state that it is not legally binding;  
20                         and

21                         “(C) at the time it is issued or upon re-  
22                         quest, be made available by the issuing agency  
23                         to interested persons and the public.

24                 “(2) Before issuing any major guidance, an  
25                 agency shall—

1           “(A) make and document a reasoned deter-  
2           mination that—

3                   “(i) such guidance is understandable  
4                   and complies with relevant statutory objec-  
5                   tives and regulatory provisions; and

6                   “(ii) identifies the costs and benefits,  
7                   including all costs to be considered during  
8                   a rulemaking under subsection (b), of re-  
9                   quiring conduct conforming to such guid-  
10                  ance and assures that such benefits justify  
11                  such costs; and

12                  “(B) confer with the Administrator of the  
13                  Office of Information and Regulatory Affairs on  
14                  the issuance of the major guidance to assure  
15                  that the guidance is reasonable, understandable,  
16                  consistent with relevant statutory and regu-  
17                  latory provisions and requirements or practices  
18                  of other agencies, does not produce costs that  
19                  are unjustified by the benefits of the major  
20                  guidance, and is otherwise appropriate.

21                  “(3) The Administrator of the Office of Infor-  
22                  mation and Regulatory Affairs shall issue updated  
23                  guidelines for use by the agencies in the issuance of  
24                  guidance documents. The guidelines shall advise  
25                  each agency not to issue guidance documents that



1 are inconsistent or incompatible with, or duplicative  
2 of, other regulations of the agency and those of  
3 other Federal agencies, and to draft its guidance  
4 documents to be simple and easy to understand,  
5 with the goal of minimizing the potential for uncer-  
6 tainty and litigation arising from the uncertainty.”.

7 **SEC. 6. ADDED DEFINITION.**

8 Section 701(b) of title 5, United States Code, is  
9 amended—

10 (1) in paragraph (1)(H), by striking “and” at  
11 the end;

12 (2) in paragraph (2), by striking the period at  
13 the end, and inserting “; and”; and

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

15 “(3) ‘substantial evidence’ means such relevant  
16 evidence as a reasonable mind might accept as ade-  
17 quate to support a conclusion in light of the record  
18 considered as a whole, taking into account whatever  
19 in the record fairly detracts from the weight of the  
20 evidence relied upon by the agency to support its de-  
21 cision.”.

22 **SEC. 7. EFFECTIVE DATE.**

23 The amendments made by this Act to sections 553,  
24 556, 701(b), 704, 706(b)(4), 706(b)(5), and 706(c) of title

- 1 5, United States Code, shall not apply to any rulemakings
- 2 pending or completed on the date of enactment of this Act.

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