

114TH CONGRESS
2D SESSION

H. R. 5377

To amend title 5, United States Code, to include guidance documents in the congressional review process of agency rulemaking.

IN THE HOUSE OF REPRESENTATIVES

MAY 27, 2016

Mr. SALMON introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 5, United States Code, to include guidance documents in the congressional review process of agency rulemaking.

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. CONGRESSIONAL REVIEW OF AGENCY RULE-**
4 **MAKING.**

5 (a) GUIDANCE DOCUMENTS.—Paragraph (3) of sec-
6 tion 804 of title 5, United States Code, is amended to
7 read as follows:

8 “(3) The term ‘rule’—

9 “(A) has the meaning given such term in
10 section 551, except that such term does not in-

1 clude (except as otherwise provided in subpara-
2 graph (B))—

3 “(i) any rule of particular applica-
4 bility, including a rule that approves or
5 prescribes for the future rates, wages,
6 prices, services, or allowances therefor, cor-
7 porate or financial structures, reorganiza-
8 tions, mergers, or acquisitions thereof, or
9 accounting practices or disclosures bearing
10 on any of the foregoing;

11 “(ii) any rule relating to agency man-
12 agement or personnel; or

13 “(iii) any rule of agency organization,
14 procedure, or practice that does not sub-
15 stantially affect the rights or obligations of
16 non-agency parties; and

17 “(B) includes guidance documents.”.

18 (b) SIGNIFICANT GUIDANCE DOCUMENTS.—Para-
19 graph (2) of section 804 of such title is amended to read
20 as follows:

21 “(2) The term ‘major rule’—

22 “(A) means any rule that the Adminis-
23 trator of the Office of Information and Regu-
24 latory Affairs of the Office of Management and

1 Budget finds has resulted in or is likely to re-
2 sult in—

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

5 “(ii) a major increase in costs or
6 prices for consumers, individual industries,
7 Federal, State, or local government agen-
8 cies, or geographic regions; or

9 “(iii) significant adverse effects on
10 competition, employment, investment, pro-
11 ductivity, innovation, or on the ability of
12 United States-based enterprises to compete
13 with foreign-based enterprises in domestic
14 and export markets; and

15 “(B) includes significant guidance docu-
16 ments.

17 The term does not include any rule promulgated
18 under the Telecommunications Act of 1996 and the
19 amendments made by that Act.”.

20 (c) DEFINITIONS.—Section 804 of such title is
21 amended by adding at the end the following new para-
22 graphs:

23 “(4) The term ‘guidance document’ means a
24 statement of general applicability and future effect,

1 other than a regulatory action, issued by a Federal
2 agency that sets forth—

3 “(A) a policy on a statutory, regulatory, or
4 technical issue; or

5 “(B) an interpretation of a statutory or
6 regulatory issue.

7 “(5) The term ‘significant guidance docu-
8 ment’—

9 “(A) means a guidance document dissemi-
10 nated to regulated entities or the general public
11 that may reasonably be anticipated to—

12 “(i) lead to an annual effect of
13 \$100,000,000 or more, or adversely affect
14 in a material way the economy, a sector of
15 the economy, productivity, competition,
16 employment, the environment, public
17 health or safety, or State, local, or tribal
18 governments or communities;

19 “(ii) create a serious inconsistency, or
20 otherwise interfere, with an action taken or
21 planned by another Federal agency;

22 “(iii) materially alter the budgetary
23 impact of any entitlement, grant, user fees,
24 or loan programs, or the rights or obliga-
25 tions of recipients thereof; or

1 “(iv) raise novel legal or policy issues
2 arising out of legal mandates; and

3 “(B) does not include any guidance docu-
4 ment—

5 “(i) on regulations issued in accord-
6 ance with section 556 or 557 of title 5,
7 United States Code;

8 “(ii) that pertains to a military or for-
9 eign affairs function of the United States,
10 other than procurement regulations and
11 regulations involving the import or export
12 of non-defense articles and services;

13 “(iii) on regulations that are limited
14 to the organization, management, or per-
15 sonnel matters of a Federal agency; or

16 “(iv) belonging to a category of guid-
17 ance documents exempted by the Adminis-
18 trator of the Office of Information and
19 Regulatory Affairs.”.

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