

114TH CONGRESS
2D SESSION

H. R. 6283

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 28, 2016

Mr. SESSIONS (for himself, Mr. CRAMER, Mr. YOHO, Mr. COLLINS of Georgia, and Mr. HOLDING) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish agency procedures for the issuance of significant 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Truth in Regulations Act of 2016”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Agency Standards for Significant Guidance Documents.

Sec. 3. Limitations on use of interim final rules; limitation on reporting joint resolutions of disapproval.

Sec. 4. ACUS study and report.

1 **SEC. 2. AGENCY STANDARDS FOR SIGNIFICANT GUIDANCE**
2 **DOCUMENTS.**

3 (a) APPROVAL PROCEDURES.—

4 (1) IN GENERAL.—Not later than 210 days
5 after the date of the enactment of this Act, the head
6 of each agency shall develop or have written proce-
7 dures for the approval of significant guidance docu-
8 ments. The procedures shall ensure that the
9 issuance of significant guidance documents is ap-
10 proved by each appropriate senior agency official.

11 (2) EXCEPTION.—The employees of an agency
12 may not deviate from the requirements of the proce-
13 dures developed pursuant to paragraph (1), unless
14 the employee has submitted an appropriate justifica-
15 tion to a supervisor who is an appropriate senior
16 agency official described paragraph (1) or the head
17 of the agency and the supervisor or head of the
18 agency has agreed to such deviation.

19 (b) CONTENTS OF SIGNIFICANT GUIDANCE DOCU-
20 MENT.—

21 (1) REQUIREMENTS.—Each significant guid-
22 ance document issued by an agency shall include the
23 following:

1 (A) The term “guidance” or a functional
2 equivalent of such term.

3 (B) An identification of each agency and
4 office issuing the document.

5 (C) An identification of the activity to
6 which and the person to whom the significant
7 guidance document applies.

8 (D) The date of issuance.

9 (E) If the document is a revision to a pre-
10 viously issued guidance document, a notation of
11 such and an identification of the document re-
12 placed.

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

15 (G) A citation to the statutory provision or
16 regulation to which the document applies or in-
17 terprets.

18 (2) PROHIBITED.—A significant guidance docu-
19 ment may not include mandatory language such as
20 “shall”, “must”, “required”, or “requirement”, un-
21 less—

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

24 (B) the language is addressed to agency
25 employees; or

1 (C) the prohibition against such mandatory
2 language prevents agency consideration of a po-
3 sition advanced by any affected private party.

4 (c) PUBLIC ACCESS AND FEEDBACK FOR SIGNIFI-
5 CANT GUIDANCE DOCUMENTS.—

6 (1) INTERNET ACCESS.—

7 (A) LIST REQUIRED.—The head of each
8 agency shall maintain on the website of such
9 agency a list of each significant guidance docu-
10 ment in effect. The list shall include the fol-
11 lowing:

12 (i) The name of each significant guid-
13 ance document.

14 (ii) Any document identification num-
15 ber.

16 (iii) The dates of issuance and revi-
17 sion.

18 (iv) An identification of which docu-
19 ments have been added, revised, or with-
20 drawn during the previous year.

21 (B) LINK TO DOCUMENT REQUIRED.—The
22 head of the agency shall provide a link from the
23 list described in subparagraph (A) to each such
24 significant guidance document.

1 (C) UPDATES TO WEBSITE.—Not later
2 than 30 days after the date on which a signifi-
3 cant guidance document is issued, the head of
4 the agency shall update the list of significant
5 guidance documents and links described in this
6 paragraph accordingly.

7 (2) PUBLIC FEEDBACK.—

8 (A) SUBMISSION OF PUBLIC COMMENTS.—

9 (i) IN GENERAL.—Not later than 60
10 days after the date of the enactment of
11 this Act, the head of each agency shall es-
12 tablish and prominently display on the
13 website of such agency a means for the
14 public—

15 (I) to electronically submit com-
16 ments on any significant guidance
17 document; and

18 (II) to electronically submit a re-
19 quest for issuance, reconsideration,
20 modification, or rescission of any sig-
21 nificant guidance document.

22 (ii) NO RESPONSE REQUIRED.—Any
23 public comment submitted under this para-
24 graph is for the benefit of the agency, and

1 a formal response to any such comment by
2 the agency is not required.

3 (B) COMPLAINTS BY THE PUBLIC.—The
4 head of each agency shall designate one or more
5 offices to receive and address complaints sub-
6 mitted by the public that the agency is not fol-
7 lowing the procedures in this section or is im-
8 properly treating a significant guidance docu-
9 ment as a binding requirement. The head of the
10 agency shall provide, on the website of such
11 agency, the name and contact information for
12 any such office.

13 (d) NOTICE AND PUBLIC COMMENT FOR ECONOMICALLY SIGNIFICANT GUIDANCE DOCUMENTS.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), not later than 60 days after an agency
17 prepares a draft of an economically significant guid-
18 ance document, the agency shall complete the fol-
19 lowing requirements:

20 (A) Publish a notice in the Federal Reg-
21 ister announcing that the draft document is
22 available.

23 (B) Post the draft document on the
24 website of the agency and make the draft pub-
25 licly available in hard copy (or notify the public

1 how the guidance document may be reviewed if
2 not in a format that permits electronic posting
3 with reasonable efforts).

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

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

8 (2) EXEMPTIONS.—Notwithstanding paragraph
9 (1), the head of an agency, in consultation with the
10 Administrator, may designate an economically sig-
11 nificant guidance document or group of such docu-
12 ments as exempt from the requirements of this sec-
13 tion for being not feasible or appropriate.

14 (e) EXIGENT CIRCUMSTANCES.—In an imminent
15 threat to public health or safety or similar exigent cir-
16 cumstance exists or when an agency is required by law
17 to act more quickly than the procedures described in this
18 section allow, the head of the agency shall certify the cir-
19 cumstance to the Administrator as soon as possible and,
20 to the extent practicable, comply with this section. For any
21 significant guidance document that is governed by a statu-
22 tory or court-imposed deadline, the agency shall, to the
23 extent practicable, schedule any proceeding for such docu-
24 ment to permit sufficient time to comply with this section.

1 (f) RULE OF CONSTRUCTION REGARDING JUDICIAL
2 REVIEW.—This section may not be construed to create
3 any right or benefit, substantive or procedural, enforceable
4 at law, against the United States, its agencies or other
5 entities, its officers or employees, or any other person.

6 (g) DEFINITIONS.—In this section:

7 (1) ADMINISTRATOR.—The term “Adminis-
8 trator” means the Administrator of the Office of In-
9 formation and Regulatory Affairs in the Office of
10 Management and Budget.

11 (2) AGENCY.—The term “agency” has the
12 meaning given that term in section 3502 of title 44,
13 United States Code, but does not include an inde-
14 pendent regulatory agency (as defined in such sec-
15 tion 3502).

16 (3) ECONOMICALLY SIGNIFICANT GUIDANCE
17 DOCUMENT.—The term “economically significant
18 guidance document”—

19 (A) means a significant guidance document
20 that may reasonably be anticipated to lead to
21 an annual effect on the economy of
22 \$100,000,000 or more or adversely affect in a
23 material way the economy or a sector of the
24 economy; and

1 (B) does not include a significant guidance
2 document on Federal expenditures and receipts.

3 (4) GUIDANCE DOCUMENT.—The term “guid-
4 ance document” means an agency statement of gen-
5 eral applicability and future effect, other than a reg-
6 ulatory action, that sets forth a policy on a statu-
7 tory, regulatory, or technical issue or an interpreta-
8 tion of a statutory or regulatory issue.

9 (5) REGULATION.—The term “regulation”
10 means an agency statement of general applicability
11 and future effect, which the agency intends to have
12 the force and effect of law, that is designed to imple-
13 ment, interpret, or prescribe law or policy or to de-
14 scribe the procedure or practice requirements of an
15 agency.

16 (6) REGULATORY ACTION.—The term “regu-
17 latory action” means any substantive action by an
18 agency (normally published in the Federal Register)
19 that promulgates or is expected to lead to the pro-
20 mulgation of a final regulation, including notices of
21 inquiry, advance notices of inquiry and notices of
22 proposed rulemaking.

23 (7) SIGNIFICANT GUIDANCE DOCUMENT.—The
24 term “significant guidance document”—

1 (A) means a guidance document dissemi-
2 nated to regulated entities or the general public
3 that may reasonably be anticipated to—

4 (i) lead to an annual effect on the
5 economy of \$100,000,000 or more or ad-
6 versely affect in a material way the econ-
7 omy, a sector of the economy, productivity,
8 competition, jobs, the environment, public
9 health or safety, or State, local, or tribal
10 governments or communities;

11 (ii) create a serious inconsistency or
12 otherwise interfere with an action taken or
13 planned by another agency;

14 (iii) materially alter the budgetary im-
15 pact of entitlements, grants, user fees, or
16 loan programs or the rights and obliga-
17 tions of recipients thereof; or

18 (iv) raise novel legal or policy issues
19 arising out of legal mandates, the Presi-
20 dent's priorities, or the principles set forth
21 in Executive Order 12866 (58 Fed. Reg.
22 190; relating to regulatory planning and
23 review); and

24 (B) does not include—

1 (i) a legal advisory opinion for inter-
2 nal executive branch use and not for re-
3 lease (such as Department of Justice Of-
4 fice of Legal Counsel opinions);

5 (ii) a briefs or other position taken by
6 an agency in an investigation, pre-litiga-
7 tion, litigation, or other enforcement pro-
8 ceeding;

9 (iii) a speech, editorial, media inter-
10 view, press material, or congressional cor-
11 respondence;

12 (iv) a guidance document that relates
13 to a military or foreign affairs function of
14 the United States (other than a guidance
15 document on procurement or the import or
16 export of non-defense articles and serv-
17 ices);

18 (v) a grant solicitation, warning letter,
19 or case or investigatory letter responding
20 to a complaint involving a fact-specific de-
21 termination;

22 (vi) a purely internal agency policy;

23 (vii) a guidance document that relates
24 to the use, operation, or control of a gov-
25 ernment facility;

1 (viii) an internal guidance document
2 directed solely to other agencies; or
3 (ix) any other category of significant
4 guidance documents exempted by the head
5 of an agency, in consultation with the Ad-
6 ministrator.

7 (h) APPLICABILITY.—This section does not affect the
8 authority of an agency to communicate the views of the
9 agency in court or in any other enforcement proceeding.

10 (i) EFFECTIVE DATE.—The requirements of this sec-
11 tion shall take effect 180 days after the date of the enact-
12 ment of this Act.

13 **SEC. 3. LIMITATIONS ON USE OF INTERIM FINAL RULES;**
14 **LIMITATION ON REPORTING JOINT RESOLU-**
15 **TIONS OF DISAPPROVAL.**

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

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

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

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

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

14 (d) RULES ON REPORTING OUT OF COMMITTEE.—
15 Section 802(b)(1) of title 5, United States Code, is amend-
16 ed by adding at the end the following: “If such a com-
17 mittee reports a joint resolution of disapproval for a rule,
18 the committee may additionally report its findings and
19 views, if the agency proposing such rule receives appro-
20 priations in a general appropriations Act, to the Com-
21 mittee on Appropriations of that House. If the committee
22 reports a joint resolution of disapproval, the chair of that
23 committee may submit recommendations on withholding
24 funds contingent upon certain actions to the chair of the
25 Committee on Appropriations of that House.”.

1 **SEC. 4. ACUS STUDY AND REPORT.**

2 (a) STUDY AND REPORT.—Not later than 9 months
3 after the date of the enactment of this Act, the Adminis-
4 trative Conference of the United States shall complete a
5 study and submit to Congress a report thereon that exam-
6 ines—

7 (1) the extent to which persons, for projects
8 subject to a permitting process under the environ-
9 mental laws of a State or under a Federal environ-
10 mental law, are subject to unnecessary, impractical,
11 or inappropriately dilatory requirements to engage in
12 mitigation of environmental harms;

13 (2) categories of projects subject to a permit-
14 ting process under the environmental laws of a State
15 or under a Federal environmental law for which it
16 would be appropriate to establish a deadline by
17 which a final determination on the issuance of a per-
18 mit should be made;

19 (3) changes to permitting processes under Fed-
20 eral environmental law that would provide for in-
21 creased protections of the rights of parties applying
22 for permits, including increased use of administra-
23 tive law judges in permitting determinations, and fi-
24 nalizing agency action more expeditiously; and

1 (4) categories of Federal rule making that
2 would be more appropriately addressed by State ac-
3 tion.

4 (b) DEFINITIONS.—In this section—

5 (1) the term “permit” means an agency’s statu-
6 torily authorized, discretionary, judicially reviewable
7 granting of permission to do something that would
8 otherwise be statutorily prohibited; and

9 (2) the term “State” means each of the several
10 States.

11 (c) REPORTING TO ACUS.—Any agency that makes
12 any determination pertaining to a permit that, in the de-
13 termination of the Administrator of the Office of Informa-
14 tion and Regulatory Affairs of the Office of Management
15 and Budget, would result in a cost of more than
16 \$25,000,000 shall report such determination, and submit
17 a copy of the requested permit, to the Administrative Con-
18 ference of the United States by not later than 30 days
19 after such determination.

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