

Calendar No. 590

116TH CONGRESS
2D SESSION

S. 3412

[Report No. 116–297]

To require a guidance clarity statement on certain agency guidance, and
for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2020

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

NOVEMBER 17, 2020

Reported by Mr. JOHNSON, without amendment

A BILL

To require a guidance clarity statement on certain agency
guidance, 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 “Guidance Clarity Act
5 of 2020”.

1 **SEC. 2. GUIDANCE CLARITY STATEMENT REQUIRED.**

2 (a) DEFINITIONS.—In this section:

3 (1) AGENCY; RULE.—The terms “agency” and
4 “rule” have the meanings given those terms in sec-
5 tion 551 of title 5, United States Code.

6 (2) GUIDANCE.—The term “guidance”—

7 (A) means an agency statement of general
8 applicability, intended to have a future effect on
9 the behavior of regulated parties, that sets forth
10 a policy on a statutory, regulatory, or technical
11 issue, or an interpretation of a statute or regu-
12 lation; and

13 (B) does not include—

14 (i) a rule promulgated pursuant to no-
15 tice and comment under section 553 of
16 title 5, United States Code;

17 (ii) a rule exempt from rulemaking re-
18 quirements under section 553(a) of title 5,
19 United States Code;

20 (iii) a rule of agency organization,
21 procedure, or practice;

22 (iv) a decision of an agency adjudica-
23 tion under section 554 of title 5, United
24 States Code, or any similar statutory pro-
25 vision;

1 (v) internal guidance directed to the
2 issuing agency or other agency that is not
3 intended to have a substantial future effect
4 on the behavior of regulated parties; or

5 (vi) internal executive branch legal ad-
6 vice or legal opinions addressed to execu-
7 tive branch officials.

8 (b) REQUIREMENT.—Each agency shall include a
9 guidance clarity statement as described in subsection (c)
10 on any guidance issued by that agency on and after the
11 date of enactment of this Act.

12 (c) GUIDANCE CLARITY STATEMENT.—A guidance
13 clarity statement required under subsection (b) shall—

14 (1) be displayed prominently on the first page
15 of the document; and

16 (2) include the following: “The contents of this
17 document do not have the force and effect of law
18 and are not meant to bind the public in any way.
19 This document is intended only to provide clarity to
20 the public regarding existing requirements under the
21 law or agency policies.”.

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