

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4078

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## AN ACT

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent.

1        *Be it enacted by the Senate and House of Representa-*  
2        *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Red Tape Reduction  
3 and Small Business Job Creation Act”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—REGULATORY FREEZE FOR JOBS

- Sec. 101. Short title.
- Sec. 102. Moratorium on significant regulatory actions.
- Sec. 103. Waivers and exceptions.
- Sec. 104. Judicial review.
- Sec. 105. Definitions.

TITLE II—MIDNIGHT RULE RELIEF

- Sec. 201. Short title.
- Sec. 202. Moratorium on midnight rules.
- Sec. 203. Special rule on statutory, regulatory, and judicial deadlines.
- Sec. 204. Exception.
- Sec. 205. Definitions.

TITLE III—REGULATORY DECREES AND SETTLEMENTS

- Sec. 301. Short title.
- Sec. 302. Consent decree and settlement reform.
- Sec. 303. Motions to modify consent decrees.
- Sec. 304. Effective date.

TITLE IV—UNFUNDED MANDATES INFORMATION AND  
TRANSPARENCY

- Sec. 401. Short title.
- Sec. 402. Purpose.
- Sec. 403. Providing for Congressional Budget Office studies on policies involving changes in conditions of grant aid.
- Sec. 404. Clarifying the definition of direct costs to reflect Congressional Budget Office practice.
- Sec. 405. Expanding the scope of reporting requirements to include regulations imposed by independent regulatory agencies.
- Sec. 406. Amendments to replace Office of Management and Budget with Office of Information and Regulatory Affairs.
- Sec. 407. Applying substantive point of order to private sector mandates.
- Sec. 408. Regulatory process and principles.
- Sec. 409. Expanding the scope of statements to accompany significant regulatory actions.
- Sec. 410. Enhanced stakeholder consultation.
- Sec. 411. New authorities and responsibilities for Office of Information and Regulatory Affairs.



1 the date of the enactment of this Act and ending on the  
2 date that the Secretary of Labor submits the report under  
3 subsection (b).

4 (b) DETERMINATION.—The Secretary of Labor shall  
5 submit a report to the Director of the Office of Manage-  
6 ment and Budget when the Secretary determines that the  
7 Bureau of Labor Statistics average of monthly unemploy-  
8 ment rates for any quarter beginning after the date of the  
9 enactment of this Act is equal to or less than 6.0 percent.

10 **SEC. 103. WAIVERS AND EXCEPTIONS.**

11 (a) IN GENERAL.—Notwithstanding any other provi-  
12 sion of this title, an agency may take a significant regu-  
13 latory action only in accordance with subsection (b), (c),  
14 or (d) during the period described in section 102(a).

15 (b) PRESIDENTIAL WAIVER.—An agency may take a  
16 significant regulatory action if the President determines  
17 by Executive Order that the significant regulatory action  
18 is—

19 (1) necessary because of an imminent threat to  
20 health or safety or other emergency;

21 (2) necessary for the enforcement of criminal or  
22 civil rights laws;

23 (3) necessary for the national security of the  
24 United States; or

1           (4) issued pursuant to any statute imple-  
2           menting an international trade agreement.

3           (c) DEREGULATORY EXCEPTION.—An agency may  
4 take a significant regulatory action if the Administrator  
5 of the Office of Information and Regulatory Affairs of the  
6 Office of Management and Budget certifies in writing that  
7 the significant regulatory action is limited to repealing an  
8 existing rule.

9           (d) CONGRESSIONAL WAIVERS.—

10           (1) SUBMISSION.—For any significant regu-  
11 latory action not eligible for a Presidential waiver  
12 pursuant to subsection (b), the President may sub-  
13 mit a written request to Congress for a waiver of the  
14 application of section 102 for such action.

15           (2) CONTENTS.—A submission by the President  
16 under this subsection shall—

17           (A) identify the significant regulatory ac-  
18 tion and the scope of the requested waiver;

19           (B) describe all the reasons the significant  
20 regulatory action is necessary to protect the  
21 public health, safety, or welfare; and

22           (C) include an explanation of why the sig-  
23 nificant regulatory action is ineligible for a  
24 Presidential waiver under subsection (b).

1           (3) CONGRESSIONAL ACTION.—Congress shall  
2           give expeditious consideration and take appropriate  
3           legislative action with respect to any submission by  
4           the President under this subsection.

5 **SEC. 104. JUDICIAL REVIEW.**

6           (a) REVIEW.—Any party adversely affected or ag-  
7           grieved by any rule or guidance resulting from a regu-  
8           latory action taken in violation of this title is entitled to  
9           judicial review in accordance with chapter 7 of title 5,  
10          United States Code. Any determination by either the  
11          President or the Secretary of Labor under this title shall  
12          be subject to judicial review under such chapter.

13          (b) JURISDICTION.—Each court having jurisdiction  
14          to review any rule or guidance resulting from a significant  
15          regulatory action for compliance with any other provision  
16          of law shall have jurisdiction to review all claims under  
17          this title.

18          (c) RELIEF.—In granting any relief in any civil ac-  
19          tion under this section, the court shall order the agency  
20          to take corrective action consistent with this title and  
21          chapter 7 of title 5, United States Code, including re-  
22          manding the rule or guidance resulting from the signifi-  
23          cant regulatory action to the agency and enjoining the ap-  
24          plication or enforcement of that rule or guidance, unless  
25          the court finds by a preponderance of the evidence that

1 application or enforcement is required to protect against  
2 an imminent and serious threat to the national security  
3 of the United States.

4 (d) REASONABLE ATTORNEY'S FEES FOR SMALL  
5 BUSINESSES.—The court shall award reasonable attor-  
6 ney's fees and costs to a substantially prevailing small  
7 business in any civil action arising under this title. A small  
8 business may qualify as substantially prevailing even with-  
9 out obtaining a final judgment in its favor if the agency  
10 that took the significant regulatory action changes its po-  
11 sition after the civil action is filed. Such award shall be  
12 paid out of the administrative budget of the office in the  
13 agency that took the challenged agency action.

14 (e) LIMITATION ON COMMENCING CIVIL ACTION.—  
15 A party may seek and obtain judicial review during the  
16 1-year period beginning on the date of the challenged  
17 agency action or within 90 days after an enforcement ac-  
18 tion or notice thereof, except that where another provision  
19 of law requires that a civil action be commenced before  
20 the expiration of that 1-year period, such lesser period  
21 shall apply.

22 (f) SMALL BUSINESS DEFINED.—In this section, the  
23 term “small business” means any business, including an  
24 unincorporated business or a sole proprietorship, that em-  
25 ploys not more than 500 employees or that has a net

1 worth of less than \$7,000,000 on the date a civil action  
2 arising under this title is filed.

3 **SEC. 105. DEFINITIONS.**

4 In this title:

5 (1) AGENCY.—The term “agency” has the  
6 meaning given that term under section 551 of title  
7 5, United States Code, except that such term does  
8 not include—

9 (A) the Board of Governors of the Federal  
10 Reserve System;

11 (B) the Federal Open Market Committee;

12 or

13 (C) the United States Postal Service.

14 (2) REGULATORY ACTION.—The term “regu-  
15 latory action” means any substantive action by an  
16 agency that promulgates or is expected to lead to the  
17 promulgation of a final rule or regulation, including  
18 a notice of inquiry, an advance notice of proposed  
19 rulemaking, and a notice of proposed rulemaking.

20 (3) RULE.—The term “rule” has the meaning  
21 given that term under section 551 of title 5, United  
22 States Code.

23 (4) SIGNIFICANT REGULATORY ACTION.—The  
24 term “significant regulatory action” means any reg-  
25 ulatory action that is likely to result in a rule or

1 guidance that the Administrator of the Office of In-  
2 formation and Regulatory Affairs of the Office of  
3 Management and Budget finds is likely to have an  
4 annual cost to the economy of \$50,000,000 or more  
5 or adversely affect in a material way the economy,  
6 a sector of the economy, productivity, competition,  
7 jobs, the environment, public health or safety, small  
8 entities, or State, local, or tribal governments or  
9 communities. In determining the annual cost to the  
10 economy under this paragraph, the Administrator  
11 shall take into account any expected change in rev-  
12 enue of businesses that will be caused by such regu-  
13 latory action, as well as any change in revenue of  
14 businesses that has already taken place as busi-  
15 nesses prepare for the implementation of the regu-  
16 latory action. If meeting that definition, such term  
17 includes any requirement by the Secretary of the  
18 Treasury, except to the extent provided in Treasury  
19 Regulations as in effect on February 21, 2011, that  
20 a payor of interest make an information return in  
21 the case of interest—

22 (1) which is described in section 871(i)(2)(A) of  
23 the Internal Revenue Code of 1986, and

24 (2) which is paid—

25 (A) to a nonresident alien, and

1 (B) on a deposit maintained at an office  
2 within the United States.

3 (5) SMALL ENTITY.—The term “small entity”  
4 has the meaning given that term under section  
5 601(6) of title 5, United States Code.

6 **TITLE II—MIDNIGHT RULE**  
7 **RELIEF**

8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Midnight Rule Relief  
10 Act of 2012”.

11 **SEC. 202. MORATORIUM ON MIDNIGHT RULES.**

12 Except as provided under sections 203 and 204, dur-  
13 ing the moratorium period, an agency may not propose  
14 or finalize any midnight rule that the Administrator of the  
15 Office of Information and Regulatory Affairs of the Office  
16 of Management and Budget finds is likely to result in an  
17 annual cost to the economy of \$50,000,000 or more or  
18 adversely affect in a material way the economy, a sector  
19 of the economy, productivity, competition, jobs, the envi-  
20 ronment, public health or safety, small entities, or State,  
21 local, or tribal governments or communities.

22 **SEC. 203. SPECIAL RULE ON STATUTORY, REGULATORY,**  
23 **AND JUDICIAL DEADLINES.**

24 (a) IN GENERAL.—Section 202 shall not apply with  
25 respect to any deadline—

1           (1) for, relating to, or involving any midnight  
2 rule;

3           (2) that was established before the beginning of  
4 the moratorium period; and

5           (3) that is required to be taken during the mor-  
6 atorium period.

7           (b) PUBLICATION OF DEADLINES.—Not later than  
8 30 days after the beginning of a moratorium period, the  
9 Administrator of the Office of Information and Regulatory  
10 Affairs of the Office of Management and Budget shall  
11 identify and publish in the Federal Register a list of dead-  
12 lines covered by subsection (a).

13 **SEC. 204. EXCEPTION.**

14           (a) EMERGENCY EXCEPTION.—Section 202 shall not  
15 apply to a midnight rule if the President determines that  
16 the midnight rule is—

17           (1) necessary because of an imminent threat to  
18 health or safety or other emergency;

19           (2) necessary for the enforcement of criminal or  
20 civil rights laws;

21           (3) necessary for the national security of the  
22 United States; or

23           (4) issued pursuant to any statute imple-  
24 menting an international trade agreement.

1 (b) DEREGULATORY EXCEPTION.—Section 202 shall  
2 not apply to a midnight rule that the Administrator of  
3 the Office of Information and Regulatory Affairs within  
4 the Office of Management and Budget certifies in writing  
5 is limited to repealing an existing rule.

6 (c) NOTICE OF EXCEPTIONS.—Not later than 30  
7 days after a determination under subsection (a) or a cer-  
8 tification is made under subsection (b), the head of the  
9 relevant agency shall publish in the Federal Register any  
10 midnight rule excluded from the moratorium period due  
11 to an exception under this section.

12 **SEC. 205. DEFINITIONS.**

13 In this title:

14 (1) AGENCY.—The term “agency” has the  
15 meaning given that term under section 551 of title  
16 5, United States Code, except that such term does  
17 not include—

18 (A) the Board of Governors of the Federal  
19 Reserve System;

20 (B) the Federal Open Market Committee;

21 or

22 (C) the United States Postal Service.

23 (2) DEADLINE.—The term “deadline” means  
24 any date certain for fulfilling any obligation or exer-  
25 cising any authority established by or under any

1 Federal statute or rule, or by or under any court  
2 order implementing any Federal statute, regulation,  
3 or rule.

4 (3) MORATORIUM PERIOD.—The term “morato-  
5 rium period” means the day after the day referred  
6 to in section 1 of title 3, United States Code,  
7 through January 20 of the following year, in which  
8 a President is not serving a consecutive term.

9 (4) MIDNIGHT RULE.—The term “midnight  
10 rule” means an agency statement of general applica-  
11 bility and future effect, issued during the morato-  
12 rium period, that is intended to have the force and  
13 effect of law and is designed—

14 (A) to implement, interpret, or prescribe  
15 law or policy; or

16 (B) to describe the procedure or practice  
17 requirements of an agency.

18 (5) RULE.—The term “rule” has the meaning  
19 given that term under section 551 of title 5, United  
20 States Code.

21 (6) SMALL ENTITY.—The term “small entity”  
22 has the meaning given that term under section  
23 601(6) of title 5, United States Code.

1           **TITLE III—REGULATORY**  
2           **DECREES AND SETTLEMENTS**

3   **SEC. 301. SHORT TITLE.**

4           This title may be cited as the “Sunshine for Regu-  
5 latory Decrees and Settlements Act of 2012”.

6   **SEC. 302. CONSENT DECREE AND SETTLEMENT REFORM.**

7           (a) APPLICATION.—The provisions of this section  
8 apply in the case of—

9                   (1) a consent decree or settlement agreement in  
10           an action to compel agency action alleged to be un-  
11           lawfully withheld or unreasonably delayed that per-  
12           tains to a regulatory action that affects the rights of  
13           private parties other than the plaintiff or the rights  
14           of State, local or Tribal government entities—

15                           (A) brought under chapter 7 of title 5,  
16                   United States Code; or

17                           (B) brought under any other statute au-  
18                   thorizing such an action; and

19                   (2) any other consent decree or settlement  
20           agreement that requires agency action that pertains  
21           to a regulatory action that affects the rights of pri-  
22           vate parties other than the plaintiff or the rights of  
23           State, local or Tribal government entities.

1 (b) IN GENERAL.—In the case of an action to be re-  
2 solved by a consent decree or a settlement agreement de-  
3 scribed in paragraph (1), the following shall apply:

4 (1) The complaint in the action, the consent de-  
5 cree or settlement agreement, the statutory basis for  
6 the consent decree or settlement agreement and its  
7 terms, and any award of attorneys' fees or costs  
8 shall be published, including electronically, in a read-  
9 ily accessible manner by the defendant agency.

10 (2) Until the conclusion of an opportunity for  
11 affected parties to intervene in the action, a party  
12 may not file with the court a motion for a consent  
13 decree or to dismiss the case pursuant to a settle-  
14 ment agreement.

15 (3) In considering a motion to intervene by any  
16 party that would be affected by the agency action in  
17 dispute, the court shall presume, subject to rebuttal,  
18 that the interests of that party would not be rep-  
19 resented adequately by the current parties to the ac-  
20 tion. In considering a motion to intervene filed by a  
21 State, local or Tribal government entity, the court  
22 shall take due account of whether the movant—

23 (A) administers jointly with the defendant  
24 agency the statutory provisions that give rise to  
25 the regulatory duty alleged in the complaint; or

1 (B) administers State, local or Tribal regu-  
2 latory authority that would be preempted by the  
3 defendant agency's discharge of the regulatory  
4 duty alleged in the complaint.

5 (4) If the court grants a motion to intervene in  
6 the action, the court shall include the plaintiff, the  
7 defendant agency, and the intervenors in settlement  
8 discussions. Settlement efforts conducted shall be  
9 pursuant to a court's mediation or alternative dis-  
10 pute resolution program, or by a district judge, mag-  
11 istrate judge, or special master, as determined by  
12 the assigned judge.

13 (5) The defendant agency shall publish in the  
14 Federal Register and by electronic means any pro-  
15 posed consent decree or settlement agreement for no  
16 fewer than 60 days of public comment before filing  
17 it with the court, including a statement of the statu-  
18 tory basis for the proposed consent decree or settle-  
19 ment agreement and its terms, allowing comment on  
20 any issue related to the matters alleged in the com-  
21 plaint or addressed or affected by the consent decree  
22 or settlement agreement.

23 (6) The defendant agency shall—

24 (A) respond to public comments received  
25 under paragraph (5); and

1 (B) when moving that the court enter the  
2 consent decree or for dismissal pursuant to the  
3 settlement agreement—

4 (i) inform the court of the statutory  
5 basis for the proposed consent decree or  
6 settlement agreement and its terms;

7 (ii) submit to the court a summary of  
8 the public comments and agency responses;

9 (iii) certify the index to the adminis-  
10 trative record of the notice and comment  
11 proceeding to the court; and

12 (iv) make that record fully accessible  
13 to the court.

14 (7) The court shall include in the judicial  
15 record the full administrative record, the index to  
16 which was certified by the agency under paragraph  
17 (6).

18 (8) If the consent decree or settlement agree-  
19 ment requires an agency action by a date certain,  
20 the agency shall, when moving for entry of the con-  
21 sent decree or dismissal based on the settlement  
22 agreement—

23 (A) inform the court of any uncompleted  
24 mandatory duties to take regulatory action that  
25 the decree or agreement does not address;

1           (B) how the decree or agreement, if ap-  
2           proved, would affect the discharge of those du-  
3           ties; and

4           (C) why the decree's or agreement's effects  
5           on the order in which the agency discharges its  
6           mandatory duties is in the public interest.

7           (9) The court shall presume, subject to rebut-  
8           tal, that it is proper to allow amicus participation by  
9           any party who filed public comments on the consent  
10          decree or settlement agreement during the court's  
11          consideration of a motion to enter the decree or dis-  
12          miss the case on the basis of the agreement.

13          (10) The court shall ensure that the proposed  
14          consent decree or settlement agreement allows suffi-  
15          cient time and procedure for the agency to comply  
16          with chapter 5 of title 5, United States Code, and  
17          other applicable statutes that govern rule making  
18          and, unless contrary to the public interest, the provi-  
19          sions of any executive orders that govern rule mak-  
20          ing.

21          (11) The defendant agency may, at its discre-  
22          tion, hold a public hearing pursuant to notice in the  
23          Federal Register and by electronic means, on wheth-  
24          er to enter into the consent decree or settlement  
25          agreement. If such a hearing is held, then, in ac-

1 cordance with paragraph (6), the agency shall sub-  
2 mit to the court a summary of the proceedings and  
3 the certified index to the hearing record, full access  
4 to the hearing record shall be given to the court, and  
5 the full hearing record shall be included in the judi-  
6 cial record.

7 (12) The Attorney General, in cases litigated by  
8 the Department of Justice, or the head of the de-  
9 fendant Federal agency, in cases litigated independ-  
10 ently by that agency, shall certify to the court his  
11 or her approval of any proposed consent decree or  
12 settlement agreement that contains any of the fol-  
13 lowing terms—

14 (A) in the case of a consent decree, terms

15 that—

16 (i) convert into mandatory duties the  
17 otherwise discretionary authorities of an  
18 agency to propose, promulgate, revise or  
19 amend regulations;

20 (ii) commit the agency to expend  
21 funds that Congress has not appropriated  
22 and that have not been budgeted for the  
23 action in question, or commit an agency to  
24 seek a particular appropriation or budget  
25 authorization;

1 (iii) divest the agency of discretion  
2 committed to it by Congress or the Con-  
3 stitution, whether such discretionary power  
4 was granted to respond to changing cir-  
5 cumstances, to make policy or managerial  
6 choices, or to protect the rights of third  
7 parties; or

8 (iv) otherwise afford relief that the  
9 court could not enter on its own authority  
10 upon a final judgment in the litigation; or

11 (B) in the case of a settlement agreement,

12 terms that—

13 (i) interfere with the agency’s author-  
14 ity to revise, amend, or issue rules through  
15 the procedures set forth in chapter 5 of  
16 title 5, United States Code, or any other  
17 statute or executive order prescribing rule  
18 making procedures for rule makings that  
19 are the subject of the settlement agree-  
20 ment;

21 (ii) commit the agency to expend  
22 funds that Congress has not appropriated  
23 and that have not been budgeted for the  
24 action in question; or

1 (iii) provide a remedy for the agency's  
2 failure to comply with the terms of the set-  
3 tlement agreement other than the revival  
4 of the action resolved by the settlement  
5 agreement, if the agreement commits the  
6 agency to exercise its discretion in a par-  
7 ticular way and such discretionary power  
8 was committed to the agency by Congress  
9 or the Constitution to respond to changing  
10 circumstances, to make policy or manage-  
11 rial choices, or to protect the rights of  
12 third parties.

13 (c) ANNUAL REPORTS.—Each agency shall submit an  
14 annual report to Congress on the number, identity, and  
15 content of complaints, consent decrees, and settlement  
16 agreements described in paragraph (1) for that year, the  
17 statutory basis for each consent decree or settlement  
18 agreement and its terms, and any awards of attorneys fees  
19 or costs in actions resolved by such decrees or agreements.

20 **SEC. 303. MOTIONS TO MODIFY CONSENT DECREES.**

21 When a defendant agency moves the court to modify  
22 a previously entered consent decree described under sec-  
23 tion 302 and the basis of the motion is that the terms  
24 of the decree are no longer fully in the public interest due  
25 to the agency's obligations to fulfill other duties or due

1 to changed facts and circumstances, the court shall review  
2 the motion and the consent decree de novo.

3 **SEC. 304. EFFECTIVE DATE.**

4 The provisions of this title apply to any covered con-  
5 sent decree or settlement agreement proposed to a court  
6 after the date of enactment of this title.

7 **TITLE IV—UNFUNDED MAN-**  
8 **DATES INFORMATION AND**  
9 **TRANSPARENCY**

10 **SEC. 401. SHORT TITLE.**

11 This title may be cited as the “Unfunded Mandates  
12 Information and Transparency Act of 2012”.

13 **SEC. 402. PURPOSE.**

14 The purpose of this title is—

15 (1) to improve the quality of the deliberations  
16 of Congress with respect to proposed Federal man-  
17 dates by—

18 (A) providing Congress and the public with  
19 more complete information about the effects of  
20 such mandates; and

21 (B) ensuring that Congress acts on such  
22 mandates only after focused deliberation on  
23 their effects; and

24 (2) to enhance the ability of Congress and the  
25 public to identify Federal mandates that may impose

1 undue harm on consumers, workers, employers,  
2 small businesses, and State, local, and tribal govern-  
3 ments.

4 **SEC. 403. PROVIDING FOR CONGRESSIONAL BUDGET OF-**  
5 **FICE STUDIES ON POLICIES INVOLVING**  
6 **CHANGES IN CONDITIONS OF GRANT AID.**

7 Section 202(g) of the Congressional Budget Act of  
8 1974 (2 U.S.C. 602(g)) is amended by adding at the end  
9 the following new paragraph:

10 “(3) ADDITIONAL STUDIES.—At the request of  
11 any Chairman or ranking member of the minority of  
12 a Committee of the Senate or the House of Rep-  
13 resentatives, the Director shall conduct an assess-  
14 ment comparing the authorized level of funding in a  
15 bill or resolution to the prospective costs of carrying  
16 out any changes to a condition of Federal assistance  
17 being imposed on State, local, or tribal governments  
18 participating in the Federal assistance program con-  
19 cerned or, in the case of a bill or joint resolution  
20 that authorizes such sums as are necessary, an as-  
21 sessment of an estimated level of funding compared  
22 to such costs.”.

1 **SEC. 404. CLARIFYING THE DEFINITION OF DIRECT COSTS**  
2 **TO REFLECT CONGRESSIONAL BUDGET OF-**  
3 **FICE PRACTICE.**

4 Section 421(3) of the Congressional Budget Act of  
5 1974 (2 U.S.C. 658(3)(A)(i)) is amended—

6 (1) in subparagraph (A)(i), by inserting “incur  
7 or” before “be required”; and

8 (2) in subparagraph (B), by inserting after “to  
9 spend” the following: “or could forgo in profits, in-  
10 cluding costs passed on to consumers or other enti-  
11 ties taking into account, to the extent practicable,  
12 behavioral changes,”.

13 **SEC. 405. EXPANDING THE SCOPE OF REPORTING RE-**  
14 **QUIREMENTS TO INCLUDE REGULATIONS IM-**  
15 **POSED BY INDEPENDENT REGULATORY**  
16 **AGENCIES.**

17 Paragraph (1) of section 421 of the Congressional  
18 Budget Act of 1974 (2 U.S.C. 658) is amended by striking  
19 “, but does not include independent regulatory agencies”  
20 and inserting “, except it does not include the Board of  
21 Governors of the Federal Reserve System or the Federal  
22 Open Market Committee”.

1 **SEC. 406. AMENDMENTS TO REPLACE OFFICE OF MANAGE-**  
2 **MENT AND BUDGET WITH OFFICE OF INFOR-**  
3 **MATION AND REGULATORY AFFAIRS.**

4 The Unfunded Mandates Reform Act of 1995 (Public  
5 Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

6 (1) in section 103(c) (2 U.S.C. 1511(c))—

7 (A) in the subsection heading, by striking  
8 “OFFICE OF MANAGEMENT AND BUDGET” and  
9 inserting “OFFICE OF INFORMATION AND REG-  
10 ULATORY AFFAIRS”; and

11 (B) by striking “Director of the Office of  
12 Management and Budget” and inserting “Ad-  
13 ministrator of the Office of Information and  
14 Regulatory Affairs”;

15 (2) in section 205(c) (2 U.S.C. 1535(c))—

16 (A) in the subsection heading, by striking  
17 “OMB”; and

18 (B) by striking “Director of the Office of  
19 Management and Budget” and inserting “Ad-  
20 ministrator of the Office of Information and  
21 Regulatory Affairs”; and

22 (3) in section 206 (2 U.S.C. 1536), by striking  
23 “Director of the Office of Management and Budget”  
24 and inserting “Administrator of the Office of Infor-  
25 mation and Regulatory Affairs”.

1 **SEC. 407. APPLYING SUBSTANTIVE POINT OF ORDER TO**  
2 **PRIVATE SECTOR MANDATES.**

3 Section 425(a)(2) of the Congressional Budget Act  
4 of 1974 (2 U.S.C. 658d(a)(2)) is amended—

5 (1) by striking “Federal intergovernmental  
6 mandates” and inserting “Federal mandates”; and

7 (2) by inserting “or 424(b)(1)” after “section  
8 424(a)(1)”.

9 **SEC. 408. REGULATORY PROCESS AND PRINCIPLES.**

10 Section 201 of the Unfunded Mandates Reform Act  
11 of 1995 (2 U.S.C. 1531) is amended to read as follows:

12 **“SEC. 201. REGULATORY PROCESS AND PRINCIPLES.**

13 “(a) IN GENERAL.—Each agency shall, unless other-  
14 wise expressly prohibited by law, assess the effects of Fed-  
15 eral regulatory actions on State, local, and tribal govern-  
16 ments and the private sector (other than to the extent that  
17 such regulatory actions incorporate requirements specifi-  
18 cally set forth in law) in accordance with the following  
19 principles:

20 “(1) Each agency shall identify the problem  
21 that it intends to address (including, if applicable,  
22 the failures of private markets or public institutions  
23 that warrant new agency action) as well as assess  
24 the significance of that problem.

25 “(2) Each agency shall examine whether exist-  
26 ing regulations (or other law) have created, or con-

1       tributed to, the problem that a new regulation is in-  
2       tended to correct and whether those regulations (or  
3       other law) should be modified to achieve the in-  
4       tended goal of regulation more effectively.

5           “(3) Each agency shall identify and assess  
6       available alternatives to direct regulation, including  
7       providing economic incentives to encourage the de-  
8       sired behavior, such as user fees or marketable per-  
9       mits, or providing information upon which choices  
10      can be made by the public.

11          “(4) If an agency determines that a regulation  
12      is the best available method of achieving the regu-  
13      latory objective, it shall design its regulations in the  
14      most cost-effective manner to achieve the regulatory  
15      objective. In doing so, each agency shall consider in-  
16      centives for innovation, consistency, predictability,  
17      the costs of enforcement and compliance (to the gov-  
18      ernment, regulated entities, and the public), flexi-  
19      bility, distributive impacts, and equity.

20          “(5) Each agency shall assess both the costs  
21      and the benefits of the intended regulation and, rec-  
22      ognizing that some costs and benefits are difficult to  
23      quantify, propose or adopt a regulation, unless ex-  
24      pressly prohibited by law, only upon a reasoned de-

1 termination that the benefits of the intended regula-  
2 tion justify its costs.

3 “(6) Each agency shall base its decisions on the  
4 best reasonably obtainable scientific, technical, eco-  
5 nomic, and other information concerning the need  
6 for, and consequences of, the intended regulation.

7 “(7) Each agency shall identify and assess al-  
8 ternative forms of regulation and shall, to the extent  
9 feasible, specify performance objectives, rather than  
10 specifying the behavior or manner of compliance  
11 that regulated entities must adopt.

12 “(8) Each agency shall avoid regulations that  
13 are inconsistent, incompatible, or duplicative with its  
14 other regulations or those of other Federal agencies.

15 “(9) Each agency shall tailor its regulations to  
16 minimize the costs of the cumulative impact of regu-  
17 lations.

18 “(10) Each agency shall draft its regulations to  
19 be simple and easy to understand, with the goal of  
20 minimizing the potential for uncertainty and litiga-  
21 tion arising from such uncertainty.

22 “(b) REGULATORY ACTION DEFINED.—In this sec-  
23 tion, the term ‘regulatory action’ means any substantive  
24 action by an agency (normally published in the Federal  
25 Register) that promulgates or is expected to lead to the

1 promulgation of a final rule or regulation, including ad-  
2 vance notices of proposed rulemaking and notices of pro-  
3 posed rulemaking.”.

4 **SEC. 409. EXPANDING THE SCOPE OF STATEMENTS TO AC-**  
5 **COMPANY SIGNIFICANT REGULATORY AC-**  
6 **TIONS.**

7 (a) IN GENERAL.—Subsection (a) of section 202 of  
8 the Unfunded Mandates Reform Act of 1995 (2 U.S.C.  
9 1532) is amended to read as follows:

10 “(a) IN GENERAL.—Unless otherwise expressly pro-  
11 hibited by law, before promulgating any general notice of  
12 proposed rulemaking or any final rule, or within six  
13 months after promulgating any final rule that was not pre-  
14 ceded by a general notice of proposed rulemaking, if the  
15 proposed rulemaking or final rule includes a Federal man-  
16 date that may result in an annual effect on State, local,  
17 or tribal governments, or to the private sector, in the ag-  
18 gregate of \$50,000,000 or more in any 1 year, the agency  
19 shall prepare a written statement containing the following:

20 “(1) The text of the draft proposed rulemaking  
21 or final rule, together with a reasonably detailed de-  
22 scription of the need for the proposed rulemaking or  
23 final rule and an explanation of how the proposed  
24 rulemaking or final rule will meet that need.

1           “(2) An assessment of the potential costs and  
2           benefits of the proposed rulemaking or final rule, in-  
3           cluding an explanation of the manner in which the  
4           proposed rulemaking or final rule is consistent with  
5           a statutory requirement and avoids undue inter-  
6           ference with State, local, and tribal governments in  
7           the exercise of their governmental functions.

8           “(3) A qualitative and quantitative assessment,  
9           including the underlying analysis, of benefits antici-  
10          pated from the proposed rulemaking or final rule  
11          (such as the promotion of the efficient functioning of  
12          the economy and private markets, the enhancement  
13          of health and safety, the protection of the natural  
14          environment, and the elimination or reduction of dis-  
15          crimination or bias).

16          “(4) A qualitative and quantitative assessment,  
17          including the underlying analysis, of costs antici-  
18          pated from the proposed rulemaking or final rule  
19          (such as the direct costs both to the Government in  
20          administering the final rule and to businesses and  
21          others in complying with the final rule, and any ad-  
22          verse effects on the efficient functioning of the econ-  
23          omy, private markets (including productivity, em-  
24          ployment, and international competitiveness), health,  
25          safety, and the natural environment);

1           “(5) Estimates by the agency, if and to the ex-  
2           tent that the agency determines that accurate esti-  
3           mates are reasonably feasible, of—

4                   “(A) the future compliance costs of the  
5           Federal mandate; and

6                   “(B) any disproportionate budgetary ef-  
7           fects of the Federal mandate upon any par-  
8           ticular regions of the nation or particular State,  
9           local, or tribal governments, urban or rural or  
10          other types of communities, or particular seg-  
11          ments of the private sector.

12          “(6)(A) A detailed description of the extent of  
13          the agency’s prior consultation with the private sec-  
14          tor and elected representatives (under section 204)  
15          of the affected State, local, and tribal governments.

16          “(B) A detailed summary of the comments and  
17          concerns that were presented by the private sector  
18          and State, local, or tribal governments either orally  
19          or in writing to the agency.

20          “(C) A detailed summary of the agency’s eval-  
21          uation of those comments and concerns.

22          “(7) A detailed summary of how the agency  
23          complied with each of the regulatory principles de-  
24          scribed in section 201.”.

1 (b) REQUIREMENT FOR DETAILED SUMMARY.—Sub-  
2 section (b) of section 202 of such Act is amended by in-  
3 serting “detailed” before “summary”.

4 **SEC. 410. ENHANCED STAKEHOLDER CONSULTATION.**

5 Section 204 of the Unfunded Mandates Reform Act  
6 of 1995 (2 U.S.C. 1534) is amended—

7 (1) in the section heading, by inserting “**AND**  
8 **PRIVATE SECTOR**” before “**INPUT**”;

9 (2) in subsection (a)—

10 (A) by inserting “, and impacted parties  
11 within the private sector (including small busi-  
12 ness),” after “on their behalf”;

13 (B) by striking “Federal intergovernmental  
14 mandates” and inserting “Federal mandates”;  
15 and

16 (3) by amending subsection (c) to read as fol-  
17 lows:

18 “(c) GUIDELINES.—For appropriate implementation  
19 of subsections (a) and (b) consistent with applicable laws  
20 and regulations, the following guidelines shall be followed:

21 “(1) Consultations shall take place as early as  
22 possible, before issuance of a notice of proposed rule-  
23 making, continue through the final rule stage, and  
24 be integrated explicitly into the rulemaking process.

1           “(2) Agencies shall consult with a wide variety  
2 of State, local, and tribal officials and impacted par-  
3 ties within the private sector (including small busi-  
4 nesses). Geographic, political, and other factors that  
5 may differentiate varying points of view should be  
6 considered.

7           “(3) Agencies should estimate benefits and  
8 costs to assist with these consultations. The scope of  
9 the consultation should reflect the cost and signifi-  
10 cance of the Federal mandate being considered.

11           “(4) Agencies shall, to the extent practicable—

12           “(A) seek out the views of State, local, and  
13 tribal governments, and impacted parties within  
14 the private sector (including small business), on  
15 costs, benefits, and risks; and

16           “(B) solicit ideas about alternative meth-  
17 ods of compliance and potential flexibilities, and  
18 input on whether the Federal regulation will  
19 harmonize with and not duplicate similar laws  
20 in other levels of government.

21           “(5) Consultations shall address the cumulative  
22 impact of regulations on the affected entities.

23           “(6) Agencies may accept electronic submis-  
24 sions of comments by relevant parties but may not

1 use those comments as the sole method of satisfying  
2 the guidelines in this subsection.”.

3 **SEC. 411. NEW AUTHORITIES AND RESPONSIBILITIES FOR**  
4 **OFFICE OF INFORMATION AND REGULATORY**  
5 **AFFAIRS.**

6 Section 208 of the Unfunded Mandates Reform Act  
7 of 1995 (2 U.S.C. 1538) is amended to read as follows:

8 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**  
9 **FAIRS RESPONSIBILITIES.**

10 “(a) IN GENERAL.—The Administrator of the Office  
11 of Information and Regulatory Affairs shall provide mean-  
12 ingful guidance and oversight so that each agency’s regu-  
13 lations for which a written statement is required under  
14 section 202 are consistent with the principles and require-  
15 ments of this title, as well as other applicable laws, and  
16 do not conflict with the policies or actions of another agen-  
17 cy. If the Administrator determines that an agency’s regu-  
18 lations for which a written statement is required under  
19 section 202 do not comply with such principles and re-  
20 quirements, are not consistent with other applicable laws,  
21 or conflict with the policies or actions of another agency,  
22 the Administrator shall identify areas of non-compliance,  
23 notify the agency, and request that the agency comply be-  
24 fore the agency finalizes the regulation concerned.

1       “(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-  
2   CY COMPLIANCE.—The Director of the Office of Informa-  
3   tion and Regulatory Affairs annually shall submit to Con-  
4   gress, including the Committee on Homeland Security and  
5   Governmental Affairs of the Senate and the Committee  
6   on Oversight and Government Reform of the House of  
7   Representatives, a written report detailing compliance by  
8   each agency with the requirements of this title that relate  
9   to regulations for which a written statement is required  
10  by section 202, including activities undertaken at the re-  
11  quest of the Director to improve compliance, during the  
12  preceding reporting period. The report shall also contain  
13  an appendix detailing compliance by each agency with sec-  
14  tion 204.”.

15 **SEC. 412. RETROSPECTIVE ANALYSIS OF EXISTING FED-**  
16 **ERAL REGULATIONS.**

17       The Unfunded Mandates Reform Act of 1995 (Public  
18  Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

19           (1) by redesignating section 209 as section 210;

20       and

21           (2) by inserting after section 208 the following

22       new section 209:

1 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**  
2 **ERAL REGULATIONS.**

3 “(a) REQUIREMENT.—At the request of the chairman  
4 or ranking minority member of a standing or select com-  
5 mittee of the House of Representatives or the Senate, an  
6 agency shall conduct a retrospective analysis of an existing  
7 Federal regulation promulgated by an agency.

8 “(b) REPORT.—Each agency conducting a retrospec-  
9 tive analysis of existing Federal regulations pursuant to  
10 subsection (a) shall submit to the chairman of the relevant  
11 committee, Congress, and the Comptroller General a re-  
12 port containing, with respect to each Federal regulation  
13 covered by the analysis—

14 “(1) a copy of the Federal regulation;

15 “(2) the continued need for the Federal regula-  
16 tion;

17 “(3) the nature of comments or complaints re-  
18 ceived concerning the Federal regulation from the  
19 public since the Federal regulation was promulgated;

20 “(4) the extent to which the Federal regulation  
21 overlaps, duplicates, or conflicts with other Federal  
22 regulations, and, to the extent feasible, with State  
23 and local governmental rules;

24 “(5) the degree to which technology, economic  
25 conditions, or other factors have changed in the area  
26 affected by the Federal regulation;

1           “(6) a complete analysis of the retrospective di-  
2           rect costs and benefits of the Federal regulation that  
3           considers studies done outside the Federal Govern-  
4           ment (if any) estimating such costs or benefits; and  
5           “(7) any litigation history challenging the Fed-  
6           eral regulation.”.

7   **SEC. 413. EXPANSION OF JUDICIAL REVIEW.**

8           Section 401(a) of the Unfunded Mandates Reform  
9   Act of 1995 (2 U.S.C. 1571(a)) is amended—

10           (1) in paragraphs (1) and (2)(A)—

11                   (A) by striking “sections 202 and  
12                   203(a)(1) and (2)” each place it appears and  
13                   inserting “sections 201, 202, 203(a)(1) and (2),  
14                   and 205(a) and (b)”;

15                   (B) by striking “only” each place it ap-  
16                   pears;

17           (2) in paragraph (2)(B), by striking “section  
18           202” and all that follows through the period at the  
19           end and inserting the following: “section 202, pre-  
20           pare the written plan under section 203(a)(1) and  
21           (2), or comply with section 205(a) and (b), a court  
22           may compel the agency to prepare such written  
23           statement, prepare such written plan, or comply with  
24           such section.”;

1           (3) in paragraph (3), by striking “written state-  
2           ment or plan is required” and all that follows  
3           through “shall not” and inserting the following:  
4           “written statement under section 202, a written plan  
5           under section 203(a)(1) and (2), or compliance with  
6           sections 201 and 205(a) and (b) is required, the in-  
7           adequacy or failure to prepare such statement (in-  
8           cluding the inadequacy or failure to prepare any es-  
9           timate, analysis, statement, or description), to pre-  
10          pare such written plan, or to comply with such sec-  
11          tion may”.

12 **TITLE V—IMPROVED COORDINA-**  
13 **TION OF AGENCY ACTIONS ON**  
14 **ENVIRONMENTAL            DOCU-**  
15 **MENTS**

16 **SEC. 501. SHORT TITLE.**

17           This title may be cited as the “Responsibly And Pro-  
18           fessionally Invigorating Development Act of 2012” or as  
19           the “RAPID Act”.

20 **SEC. 502. COORDINATION OF AGENCY ADMINISTRATIVE OP-**  
21 **ERATIONS FOR EFFICIENT DECISIONMAKING.**

22           (a) IN GENERAL.—Part I of chapter 5 of title 5,  
23           United States Code, is amended by inserting after sub-  
24           chapter II the following:

1           “SUBCHAPTER IIA—INTERAGENCY  
2           COORDINATION REGARDING PERMITTING  
3   **“§ 560. Coordination of agency administrative oper-**  
4                           **ations for efficient decisionmaking**

5           “(a) CONGRESSIONAL DECLARATION OF PURPOSE.—  
6   The purpose of this subchapter is to establish a framework  
7   and procedures to streamline, increase the efficiency of,  
8   and enhance coordination of agency administration of the  
9   regulatory review, environmental decisionmaking, and per-  
10   mitting process for projects undertaken, reviewed, or fund-  
11   ed by Federal agencies. This subchapter will ensure that  
12   agencies administer the regulatory process in a manner  
13   that is efficient so that citizens are not burdened with reg-  
14   ulatory excuses and time delays.

15          “(b) DEFINITIONS.—For purposes of this sub-  
16   chapter, the term—

17               “(1) ‘agency’ means any agency, department, or  
18               other unit of Federal, State, local, or Indian tribal  
19               government;

20               “(2) ‘category of projects’ means 2 or more  
21               projects related by project type, potential environ-  
22               mental impacts, geographic location, or another  
23               similar project feature or characteristic;

1           “(3) ‘environmental assessment’ means a con-  
2           cise public document for which a Federal agency is  
3           responsible that serves to—

4                   “(A) briefly provide sufficient evidence and  
5                   analysis for determining whether to prepare an  
6                   environmental impact statement or a finding of  
7                   no significant impact;

8                   “(B) aid an agency’s compliance with  
9                   NEPA when no environmental impact state-  
10                  ment is necessary; and

11                  “(C) facilitate preparation of an environ-  
12                  mental impact statement when one is necessary;

13           “(4) ‘environmental impact statement’ means  
14           the detailed statement of significant environmental  
15           impacts required to be prepared under NEPA;

16           “(5) ‘environmental review’ means the Federal  
17           agency procedures for preparing an environmental  
18           impact statement, environmental assessment, cat-  
19           egorical exclusion, or other document under NEPA;

20           “(6) ‘environmental decisionmaking process’  
21           means the Federal agency procedures for under-  
22           taking and completion of any environmental permit,  
23           decision, approval, review, or study under any Fed-  
24           eral law other than NEPA for a project subject to  
25           an environmental review;

1           “(7) ‘environmental document’ means an envi-  
2           ronmental assessment or environmental impact  
3           statement, and includes any supplemental document  
4           or document prepared pursuant to a court order;

5           “(8) ‘finding of no significant impact’ means a  
6           document by a Federal agency briefly presenting the  
7           reasons why a project, not otherwise subject to a  
8           categorical exclusion, will not have a significant ef-  
9           fect on the human environment and for which an en-  
10          vironmental impact statement therefore will not be  
11          prepared;

12          “(9) ‘lead agency’ means the Federal agency  
13          preparing or responsible for preparing the environ-  
14          mental document;

15          “(10) ‘NEPA’ means the National Environ-  
16          mental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

17          “(11) ‘project’ means major Federal actions  
18          that are construction activities undertaken with Fed-  
19          eral funds or that are construction activities that re-  
20          quire approval by a permit or regulatory decision  
21          issued by a Federal agency;

22          “(12) ‘project sponsor’ means the agency or  
23          other entity, including any private or public-private  
24          entity, that seeks approval for a project or is other-  
25          wise responsible for undertaking a project; and

1           “(13) ‘record of decision’ means a document  
2           prepared by a lead agency under NEPA following an  
3           environmental impact statement that states the lead  
4           agency’s decision, identifies the alternatives consid-  
5           ered by the agency in reaching its decision and  
6           states whether all practicable means to avoid or min-  
7           imize environmental harm from the alternative se-  
8           lected have been adopted, and if not, why they were  
9           not adopted.

10          “(c) PREPARATION OF ENVIRONMENTAL DOCU-  
11          MENTS.—Upon the request of the lead agency, the project  
12          sponsor shall be authorized to prepare any document for  
13          purposes of an environmental review required in support  
14          of any project or approval by the lead agency if the lead  
15          agency furnishes oversight in such preparation and inde-  
16          pendently evaluates such document and the document is  
17          approved and adopted by the lead agency prior to taking  
18          any action or making any approval based on such docu-  
19          ment.

20          “(d) ADOPTION AND USE OF DOCUMENTS.—

21                  “(1) DOCUMENTS PREPARED UNDER NEPA.—

22                          “(A) Not more than 1 environmental im-  
23                          pact statement and 1 environmental assessment  
24                          shall be prepared under NEPA for a project  
25                          (except for supplemental environmental docu-

1           ments prepared under NEPA or environmental  
2           documents prepared pursuant to a court order),  
3           and, except as otherwise provided by law, the  
4           lead agency shall prepare the environmental im-  
5           pact statement or environmental assessment.  
6           After the lead agency issues a record of deci-  
7           sion, no Federal agency responsible for making  
8           any approval for that project may rely on a doc-  
9           ument other than the environmental document  
10          prepared by the lead agency.

11           “(B) Upon the request of a project spon-  
12          sor, a lead agency may adopt, use, or rely upon  
13          secondary and cumulative impact analyses in-  
14          cluded in any environmental document prepared  
15          under NEPA for projects in the same geo-  
16          graphic area where the secondary and cumu-  
17          lative impact analyses provide information and  
18          data that pertains to the NEPA decision for the  
19          project under review.

20          “(2) STATE ENVIRONMENTAL DOCUMENTS;  
21          SUPPLEMENTAL DOCUMENTS.—

22           “(A) Upon the request of a project spon-  
23          sor, a lead agency may adopt a document that  
24          has been prepared for a project under State  
25          laws and procedures as the environmental im-

1            pact statement or environmental assessment for  
2            the project, provided that the State laws and  
3            procedures under which the document was pre-  
4            pared provide environmental protection and op-  
5            portunities for public involvement that are sub-  
6            stantially equivalent to NEPA.

7            “(B) An environmental document adopted  
8            under subparagraph (A) is deemed to satisfy  
9            the lead agency’s obligation under NEPA to  
10           prepare an environmental impact statement or  
11           environmental assessment.

12           “(C) In the case of a document described  
13           in subparagraph (A), during the period after  
14           preparation of the document but before its  
15           adoption by the lead agency, the lead agency  
16           shall prepare and publish a supplement to that  
17           document if the lead agency determines that—

18                    “(i) a significant change has been  
19                    made to the project that is relevant for  
20                    purposes of environmental review of the  
21                    project; or

22                    “(ii) there have been significant  
23                    changes in circumstances or availability of  
24                    information relevant to the environmental  
25                    review for the project.

1           “(D) If the agency prepares and publishes  
2           a supplemental document under subparagraph  
3           (C), the lead agency may solicit comments from  
4           agencies and the public on the supplemental  
5           document for a period of not more than 45  
6           days beginning on the date of the publication of  
7           the supplement.

8           “(E) A lead agency shall issue its record of  
9           decision or finding of no significant impact, as  
10          appropriate, based upon the document adopted  
11          under subparagraph (A), and any supplements  
12          thereto.

13          “(3) CONTEMPORANEOUS PROJECTS.—If the  
14          lead agency determines that there is a reasonable  
15          likelihood that the project will have similar environ-  
16          mental impacts as a similar project in geographical  
17          proximity to the project, and that similar project  
18          was subject to environmental review or similar State  
19          procedures within the 5 year period immediately pre-  
20          ceding the date that the lead agency makes that de-  
21          termination, the lead agency may adopt the environ-  
22          mental document that resulted from that environ-  
23          mental review or similar State procedure. The lead  
24          agency may adopt such an environmental document,  
25          if it is prepared under State laws and procedures

1       only upon making a favorable determination on such  
2       environmental document pursuant to paragraph  
3       (2)(A).

4       “(e) PARTICIPATING AGENCIES.—

5             “(1) IN GENERAL.—The lead agency shall be  
6       responsible for inviting and designating participating  
7       agencies in accordance with this subsection. The  
8       lead agency shall provide the invitation or notice of  
9       the designation in writing.

10            “(2) FEDERAL PARTICIPATING AGENCIES.—Any  
11       Federal agency that is required to adopt the envi-  
12       ronmental document of the lead agency for a project  
13       shall be designated as a participating agency and  
14       shall collaborate on the preparation of the environ-  
15       mental document, unless the Federal agency informs  
16       the lead agency, in writing, by a time specified by  
17       the lead agency in the designation of the Federal  
18       agency that the Federal agency—

19             “(A) has no jurisdiction or authority with  
20       respect to the project;

21             “(B) has no expertise or information rel-  
22       evant to the project; and

23             “(C) does not intend to submit comments  
24       on the project.

1           “(3) INVITATION.—The lead agency shall iden-  
2           tify, as early as practicable in the environmental re-  
3           view for a project, any agencies other than an agen-  
4           cy described in paragraph (2) that may have an in-  
5           terest in the project, including, where appropriate,  
6           Governors of affected States, and heads of appro-  
7           priate tribal and local (including county) govern-  
8           ments, and shall invite such identified agencies and  
9           officials to become participating agencies in the envi-  
10          ronmental review for the project. The invitation shall  
11          set a deadline of 30 days for responses to be sub-  
12          mitted, which may only be extended by the lead  
13          agency for good cause shown. Any agency that fails  
14          to respond prior to the deadline shall be deemed to  
15          have declined the invitation.

16          “(4) EFFECT OF DECLINING PARTICIPATING  
17          AGENCY INVITATION.—Any agency that declines a  
18          designation or invitation by the lead agency to be a  
19          participating agency shall be precluded from submit-  
20          ting comments on any document prepared under  
21          NEPA for that project or taking any measures to  
22          oppose, based on the environmental review, any per-  
23          mit, license, or approval related to that project.

1           “(5) EFFECT OF DESIGNATION.—Designation  
2 as a participating agency under this subsection does  
3 not imply that the participating agency—

4                   “(A) supports a proposed project; or

5                   “(B) has any jurisdiction over, or special  
6 expertise with respect to evaluation of, the  
7 project.

8           “(6) COOPERATING AGENCY.—A participating  
9 agency may also be designated by a lead agency as  
10 a ‘cooperating agency’ under the regulations con-  
11 tained in part 1500 of title 40, Code of Federal Reg-  
12 ulations, as in effect on January 1, 2011. Designa-  
13 tion as a cooperating agency shall have no effect on  
14 designation as participating agency. No agency that  
15 is not a participating agency may be designated as  
16 a cooperating agency.

17           “(7) CONCURRENT REVIEWS.—Each Federal  
18 agency shall—

19                   “(A) carry out obligations of the Federal  
20 agency under other applicable law concurrently  
21 and in conjunction with the review required  
22 under NEPA; and

23                   “(B) in accordance with the rules made by  
24 the Council on Environmental Quality pursuant  
25 to subsection (n)(1), make and carry out such

1 rules, policies, and procedures as may be rea-  
2 sonably necessary to enable the agency to en-  
3 sure completion of the environmental review  
4 and environmental decisionmaking process in a  
5 timely, coordinated, and environmentally re-  
6 sponsible manner.

7 “(8) COMMENTS.—Each participating agency  
8 shall limit its comments on a project to areas that  
9 are within the authority and expertise of such par-  
10 ticipating agency. Each participating agency shall  
11 identify in such comments the statutory authority of  
12 the participating agency pertaining to the subject  
13 matter of its comments. The lead agency shall not  
14 act upon, respond to or include in any document  
15 prepared under NEPA, any comment submitted by  
16 a participating agency that concerns matters that  
17 are outside of the authority and expertise of the  
18 commenting participating agency.

19 “(f) PROJECT INITIATION REQUEST.—

20 “(1) NOTICE.—A project sponsor shall provide  
21 the Federal agency responsible for undertaking a  
22 project with notice of the initiation of the project by  
23 providing a description of the proposed project, the  
24 general location of the proposed project, and a state-  
25 ment of any Federal approvals anticipated to be nec-

1        essary for the proposed project, for the purpose of  
2        informing the Federal agency that the environmental  
3        review should be initiated.

4               “(2) LEAD AGENCY INITIATION.—The agency  
5        receiving a project initiation notice under paragraph  
6        (1) shall promptly identify the lead agency for the  
7        project, and the lead agency shall initiate the envi-  
8        ronmental review within a period of 45 days after  
9        receiving the notice required by paragraph (1) by in-  
10       viting or designating agencies to become partici-  
11       pating agencies, or, where the lead agency deter-  
12       mines that no participating agencies are required for  
13       the project, by taking such other actions that are  
14       reasonable and necessary to initiate the environ-  
15       mental review.

16               “(g) ALTERNATIVES ANALYSIS.—

17               “(1) PARTICIPATION.—As early as practicable  
18        during the environmental review, but no later than  
19        during scoping for a project requiring the prepara-  
20        tion of an environmental impact statement, the lead  
21        agency shall provide an opportunity for involvement  
22        by cooperating agencies in determining the range of  
23        alternatives to be considered for a project.

24               “(2) RANGE OF ALTERNATIVES.—Following  
25        participation under paragraph (1), the lead agency

1 shall determine the range of alternatives for consid-  
2 eration in any document which the lead agency is re-  
3 sponsible for preparing for the project, subject to the  
4 following limitations:

5 “(A) NO EVALUATION OF CERTAIN ALTER-  
6 NATIVES.—No Federal agency shall evaluate  
7 any alternative that was identified but not car-  
8 ried forward for detailed evaluation in an envi-  
9 ronmental document or evaluated and not se-  
10 lected in any environmental document prepared  
11 under NEPA for the same project.

12 “(B) ONLY FEASIBLE ALTERNATIVES  
13 EVALUATED.—Where a project is being con-  
14 structed, managed, funded, or undertaken by a  
15 project sponsor that is not a Federal agency,  
16 Federal agencies shall only be required to evalu-  
17 ate alternatives that the project sponsor could  
18 feasibly undertake, consistent with the purpose  
19 of and the need for the project, including alter-  
20 natives that can be undertaken by the project  
21 sponsor and that are technically and economi-  
22 cally feasible.

23 “(3) METHODOLOGIES.—

24 “(A) IN GENERAL.—The lead agency shall  
25 determine, in collaboration with cooperating

1 agencies at appropriate times during the envi-  
2 ronmental review, the methodologies to be used  
3 and the level of detail required in the analysis  
4 of each alternative for a project. The lead agen-  
5 cy shall include in the environmental document  
6 a description of the methodologies used and  
7 how the methodologies were selected.

8 “(B) NO EVALUATION OF INAPPROPRIATE  
9 ALTERNATIVES.—When a lead agency deter-  
10 mines that an alternative does not meet the  
11 purpose and need for a project, that alternative  
12 is not required to be evaluated in detail in an  
13 environmental document.

14 “(4) PREFERRED ALTERNATIVE.—At the dis-  
15 cretion of the lead agency, the preferred alternative  
16 for a project, after being identified, may be devel-  
17 oped to a higher level of detail than other alter-  
18 natives in order to facilitate the development of miti-  
19 gation measures or concurrent compliance with other  
20 applicable laws if the lead agency determines that  
21 the development of such higher level of detail will  
22 not prevent the lead agency from making an impar-  
23 tial decision as to whether to accept another alter-  
24 native which is being considered in the environ-  
25 mental review.

1           “(5) EMPLOYMENT ANALYSIS.—The evaluation  
2 of each alternative in an environmental impact state-  
3 ment or an environmental assessment shall identify  
4 the potential effects of the alternative on employ-  
5 ment, including potential short-term and long-term  
6 employment increases and reductions and shifts in  
7 employment.

8           “(h) COORDINATION AND SCHEDULING.—

9           “(1) COORDINATION PLAN.—

10           “(A) IN GENERAL.—The lead agency shall  
11 establish and implement a plan for coordinating  
12 public and agency participation in and comment  
13 on the environmental review for a project or  
14 category of projects to facilitate the expeditious  
15 resolution of the environmental review.

16           “(B) SCHEDULE.—

17           “(i) IN GENERAL.—The lead agency  
18 shall establish as part of the coordination  
19 plan for a project, after consultation with  
20 each participating agency and, where appli-  
21 cable, the project sponsor, a schedule for  
22 completion of the environmental review.  
23 The schedule shall include deadlines, con-  
24 sistent with subsection (i), for decisions  
25 under any other Federal laws (including

1 the issuance or denial of a permit or li-  
2 cense) relating to the project that is cov-  
3 ered by the schedule.

4 “(ii) FACTORS FOR CONSIDER-  
5 ATION.—In establishing the schedule, the  
6 lead agency shall consider factors such  
7 as—

8 “(I) the responsibilities of par-  
9 ticipating agencies under applicable  
10 laws;

11 “(II) resources available to the  
12 participating agencies;

13 “(III) overall size and complexity  
14 of the project;

15 “(IV) overall schedule for and  
16 cost of the project;

17 “(V) the sensitivity of the natural  
18 and historic resources that could be  
19 affected by the project; and

20 “(VI) the extent to which similar  
21 projects in geographic proximity were  
22 recently subject to environmental re-  
23 view or similar State procedures.

24 “(iii) COMPLIANCE WITH THE SCHED-  
25 ULE.—

1           “(I) All participating agencies  
2 shall comply with the time periods es-  
3 tablished in the schedule or with any  
4 modified time periods, where the lead  
5 agency modifies the schedule pursuant  
6 to subparagraph (D).

7           “(II) The lead agency shall dis-  
8 regard and shall not respond to or in-  
9 clude in any document prepared under  
10 NEPA, any comment or information  
11 submitted or any finding made by a  
12 participating agency that is outside of  
13 the time period established in the  
14 schedule or modification pursuant to  
15 subparagraph (D) for that agency’s  
16 comment, submission or finding.

17           “(III) If a participating agency  
18 fails to object in writing to a lead  
19 agency decision, finding or request for  
20 concurrence within the time period es-  
21 tablished under law or by the lead  
22 agency, the agency shall be deemed to  
23 have concurred in the decision, finding  
24 or request.

1           “(C) CONSISTENCY WITH OTHER TIME PE-  
2           RIODS.—A schedule under subparagraph (B)  
3           shall be consistent with any other relevant time  
4           periods established under Federal law.

5           “(D) MODIFICATION.—The lead agency  
6           may—

7                   “(i) lengthen a schedule established  
8                   under subparagraph (B) for good cause;  
9                   and

10                   “(ii) shorten a schedule only with the  
11                   concurrence of the cooperating agencies.

12           “(E) DISSEMINATION.—A copy of a sched-  
13           ule under subparagraph (B), and of any modi-  
14           fications to the schedule, shall be—

15                   “(i) provided within 15 days of com-  
16                   pletion or modification of such schedule to  
17                   all participating agencies and to the  
18                   project sponsor; and

19                   “(ii) made available to the public.

20           “(F) ROLES AND RESPONSIBILITY OF  
21           LEAD AGENCY.—With respect to the environ-  
22           mental review for any project, the lead agency  
23           shall have authority and responsibility to take  
24           such actions as are necessary and proper, with-  
25           in the authority of the lead agency, to facilitate

1           the expeditious resolution of the environmental  
2           review for the project.

3           “(i) DEADLINES.—The following deadlines shall  
4 apply to any project subject to review under NEPA and  
5 any decision under any Federal law relating to such  
6 project (including the issuance or denial of a permit or  
7 license or any required finding):

8           “(1) ENVIRONMENTAL REVIEW DEADLINES.—  
9           The lead agency shall complete the environmental  
10          review within the following deadlines:

11           “(A) ENVIRONMENTAL IMPACT STATE-  
12          MENT PROJECTS.—For projects requiring prep-  
13          aration of an environmental impact statement—

14           “(i) the lead agency shall issue an en-  
15          vironmental impact statement within 2  
16          years after the earlier of the date the lead  
17          agency receives the project initiation re-  
18          quest or a Notice of Intent to Prepare an  
19          Environmental Impact Statement is pub-  
20          lished in the Federal Register; and

21           “(ii) in circumstances where the lead  
22          agency has prepared an environmental as-  
23          sessment and determined that an environ-  
24          mental impact statement will be required,  
25          the lead agency shall issue the environ-

1           mental impact statement within 2 years  
2           after the date of publication of the Notice  
3           of Intent to Prepare an Environmental Im-  
4           pact Statement in the Federal Register.

5           “(B) ENVIRONMENTAL ASSESSMENT  
6           PROJECTS.—For projects requiring preparation  
7           of an environmental assessment, the lead agen-  
8           cy shall issue a finding of no significant impact  
9           or publish a Notice of Intent to Prepare an En-  
10          vironmental Impact Statement in the Federal  
11          Register within 1 year after the earlier of the  
12          date the lead agency receives the project initi-  
13          ation request, makes a decision to prepare an  
14          environmental assessment, or sends out partici-  
15          pating agency invitations.

16          “(2) EXTENSIONS.—

17                 “(A) REQUIREMENTS.—The environmental  
18                 review deadlines may be extended only if—

19                         “(i) a different deadline is established  
20                         by agreement of the lead agency, the  
21                         project sponsor, and all participating agen-  
22                         cies; or

23                         “(ii) the deadline is extended by the  
24                         lead agency for good cause.

1           “(B) LIMITATION.—The environmental re-  
2 view shall not be extended by more than 1 year  
3 for a project requiring preparation of an envi-  
4 ronmental impact statement or by more than  
5 180 days for a project requiring preparation of  
6 an environmental assessment.

7           “(3) ENVIRONMENTAL REVIEW COMMENTS.—

8           “(A) COMMENTS ON DRAFT ENVIRON-  
9 MENTAL IMPACT STATEMENT.—For comments  
10 by agencies and the public on a draft environ-  
11 mental impact statement, the lead agency shall  
12 establish a comment period of not more than 60  
13 days after publication in the Federal Register  
14 of notice of the date of public availability of  
15 such document, unless—

16           “(i) a different deadline is established  
17 by agreement of the lead agency, the  
18 project sponsor, and all participating agen-  
19 cies; or

20           “(ii) the deadline is extended by the  
21 lead agency for good cause.

22           “(B) OTHER COMMENTS.—For all other  
23 comment periods for agency or public comments  
24 in the environmental review process, the lead  
25 agency shall establish a comment period of no

1 more than 30 days from availability of the ma-  
2 terials on which comment is requested, unless—

3 “(i) a different deadline is established  
4 by agreement of the lead agency, the  
5 project sponsor, and all participating agen-  
6 cies; or

7 “(ii) the deadline is extended by the  
8 lead agency for good cause.

9 “(4) DEADLINES FOR DECISIONS UNDER  
10 OTHER LAWS.—Notwithstanding any other provision  
11 of law, in any case in which a decision under any  
12 other Federal law relating to the undertaking of a  
13 project being reviewed under NEPA (including the  
14 issuance or denial of a permit or license) is required  
15 to be made, the following deadlines shall apply:

16 “(A) DECISIONS PRIOR TO RECORD OF DE-  
17 CISION OR FINDING OF NO SIGNIFICANT IM-  
18 PACT.—If a Federal agency is required to ap-  
19 prove, or otherwise to act upon, a permit, li-  
20 cense, or other similar application for approval  
21 related to a project prior to the record of deci-  
22 sion or finding of no significant impact, such  
23 Federal agency shall approve or otherwise act  
24 not later than the end of a 90 day period begin-  
25 ning—

1 “(i) after all other relevant agency re-  
2 view related to the project is complete; and

3 “(ii) after the lead agency publishes a  
4 notice of the availability of the final envi-  
5 ronmental impact statement or issuance of  
6 other final environmental documents, or no  
7 later than such other date that is otherwise  
8 required by law, whichever event occurs  
9 first.

10 “(B) OTHER DECISIONS.—With regard to  
11 any approval or other action related to a project  
12 by a Federal agency that is not subject to sub-  
13 paragraph (A), each Federal agency shall ap-  
14 prove or otherwise act not later than the end of  
15 a period of 180 days beginning—

16 “(i) after all other relevant agency re-  
17 view related to the project is complete; and

18 “(ii) after the lead agency issues the  
19 record of decision or finding of no signifi-  
20 cant impact, unless a different deadline is  
21 established by agreement of the Federal  
22 agency, lead agency, and the project spon-  
23 sor, where applicable, or the deadline is ex-  
24 tended by the Federal agency for good  
25 cause, provided that such extension shall

1 not extend beyond a period that is 1 year  
2 after the lead agency issues the record of  
3 decision or finding of no significant im-  
4 pact.

5 “(C) FAILURE TO ACT.—In the event that  
6 any Federal agency fails to approve, or other-  
7 wise to act upon, a permit, license, or other  
8 similar application for approval related to a  
9 project within the applicable deadline described  
10 in subparagraph (A) or (B), the permit, license,  
11 or other similar application shall be deemed ap-  
12 proved by such agency and the agency shall  
13 take action in accordance with such approval  
14 within 30 days of the applicable deadline de-  
15 scribed in subparagraph (A) or (B).

16 “(D) FINAL AGENCY ACTION.—Any ap-  
17 proval under subparagraph (C) is deemed to be  
18 final agency action, and may not be reversed by  
19 any agency. In any action under chapter 7 seek-  
20 ing review of such a final agency action, the  
21 court may not set aside such agency action by  
22 reason of that agency action having occurred  
23 under this paragraph.

24 “(j) ISSUE IDENTIFICATION AND RESOLUTION.—

1           “(1) COOPERATION.—The lead agency and the  
2 participating agencies shall work cooperatively in ac-  
3 cordance with this section to identify and resolve  
4 issues that could delay completion of the environ-  
5 mental review or could result in denial of any ap-  
6 provals required for the project under applicable  
7 laws.

8           “(2) LEAD AGENCY RESPONSIBILITIES.—The  
9 lead agency shall make information available to the  
10 participating agencies as early as practicable in the  
11 environmental review regarding the environmental,  
12 historic, and socioeconomic resources located within  
13 the project area and the general locations of the al-  
14 ternatives under consideration. Such information  
15 may be based on existing data sources, including ge-  
16 ographic information systems mapping.

17           “(3) PARTICIPATING AGENCY RESPONSIBIL-  
18 ITIES.—Based on information received from the lead  
19 agency, participating agencies shall identify, as early  
20 as practicable, any issues of concern regarding the  
21 project’s potential environmental, historic, or socio-  
22 economic impacts. In this paragraph, issues of con-  
23 cern include any issues that could substantially delay  
24 or prevent an agency from granting a permit or  
25 other approval that is needed for the project.

1           “(4) ISSUE RESOLUTION.—

2                   “(A) MEETING OF PARTICIPATING AGEN-  
3           CIES.—At any time upon request of a project  
4           sponsor, the lead agency shall promptly convene  
5           a meeting with the relevant participating agen-  
6           cies and the project sponsor, to resolve issues  
7           that could delay completion of the environ-  
8           mental review or could result in denial of any  
9           approvals required for the project under appli-  
10          cable laws.

11                   “(B) NOTICE THAT RESOLUTION CANNOT  
12          BE ACHIEVED.—If a resolution cannot be  
13          achieved within 30 days following such a meet-  
14          ing and a determination by the lead agency that  
15          all information necessary to resolve the issue  
16          has been obtained, the lead agency shall notify  
17          the heads of all participating agencies, the  
18          project sponsor, and the Council on Environ-  
19          mental Quality for further proceedings in ac-  
20          cordance with section 204 of NEPA, and shall  
21          publish such notification in the Federal Reg-  
22          ister.

23                   “(k) REPORT TO CONGRESS.—The head of each Fed-  
24          eral agency shall report annually to Congress—

1           “(1) the projects for which the agency initiated  
2           preparation of an environmental impact statement or  
3           environmental assessment;

4           “(2) the projects for which the agency issued a  
5           record of decision or finding of no significant impact  
6           and the length of time it took the agency to com-  
7           plete the environmental review for each such project;

8           “(3) the filing of any lawsuits against the agen-  
9           cy seeking judicial review of a permit, license, or ap-  
10          proval issued by the agency for an action subject to  
11          NEPA, including the date the complaint was filed,  
12          the court in which the complaint was filed, and a  
13          summary of the claims for which judicial review was  
14          sought; and

15          “(4) the resolution of any lawsuits against the  
16          agency that sought judicial review of a permit, li-  
17          cense, or approval issued by the agency for an action  
18          subject to NEPA.

19          “(1) LIMITATIONS ON CLAIMS.—

20                 “(1) IN GENERAL.—Notwithstanding any other  
21                 provision of law, a claim arising under Federal law  
22                 seeking judicial review of a permit, license, or ap-  
23                 proval issued by a Federal agency for an action sub-  
24                 ject to NEPA shall be barred unless—

1           “(A) in the case of a claim pertaining to  
2           a project for which an environmental review  
3           was conducted and an opportunity for comment  
4           was provided, the claim is filed by a party that  
5           submitted a comment during the environmental  
6           review on the issue on which the party seeks ju-  
7           dicial review, and such comment was suffi-  
8           ciently detailed to put the lead agency on notice  
9           of the issue upon which the party seeks judicial  
10          review; and

11          “(B) filed within 180 days after publica-  
12          tion of a notice in the Federal Register an-  
13          nouncing that the permit, license, or approval is  
14          final pursuant to the law under which the agen-  
15          cy action is taken, unless a shorter time is spec-  
16          ified in the Federal law pursuant to which judi-  
17          cial review is allowed.

18          “(2) NEW INFORMATION.—The preparation of  
19          a supplemental environmental impact statement,  
20          when required, is deemed a separate final agency ac-  
21          tion and the deadline for filing a claim for judicial  
22          review of such action shall be 180 days after the  
23          date of publication of a notice in the Federal Reg-  
24          ister announcing the record of decision for such ac-  
25          tion. Any claim challenging agency action on the

1 basis of information in a supplemental environ-  
2 mental impact statement shall be limited to chal-  
3 lenges on the basis of that information.

4 “(3) RULE OF CONSTRUCTION.—Nothing in  
5 this subsection shall be construed to create a right  
6 to judicial review or place any limit on filing a claim  
7 that a person has violated the terms of a permit, li-  
8 cense, or approval.

9 “(m) CATEGORIES OF PROJECTS.—The authorities  
10 granted under this subchapter may be exercised for an in-  
11 dividual project or a category of projects.

12 “(n) EFFECTIVE DATE.—The requirements of this  
13 subchapter shall apply only to environmental reviews and  
14 environmental decisionmaking processes initiated after the  
15 date of enactment of this subchapter.

16 “(o) APPLICABILITY.—Except as provided in sub-  
17 section (p), this subchapter applies, according to the provi-  
18 sions thereof, to all projects for which a Federal agency  
19 is required to undertake an environmental review or make  
20 a decision under an environmental law for a project for  
21 which a Federal agency is undertaking an environmental  
22 review.

23 “(p) SAVINGS CLAUSE.—Nothing in this section shall  
24 be construed to supersede, amend, or modify sections 134,  
25 135, 139, 325, 326, and 327 of title 23, United States

1 Code, sections 5303 and 5304 of title 49, United States  
2 Code, or subtitle C of title I of division A of the Moving  
3 Ahead for Progress in the 21st Century Act and the  
4 amendments made by such subtitle (Public Law 112–  
5 141).”.

6 (b) TECHNICAL AMENDMENT.—The table of sections  
7 for chapter 5 of title 5, United States Code, is amended  
8 by inserting after the item relating to subchapter II the  
9 following:

“SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING  
PERMITTING

“560. Coordination of agency administrative operations for efficient decision-  
making.”.

10 (c) REGULATIONS.—

11 (1) COUNCIL ON ENVIRONMENTAL QUALITY.—

12 Not later than 180 days after the date of enactment  
13 of this title, the Council on Environmental Quality  
14 shall amend the regulations contained in part 1500  
15 of title 40, Code of Federal Regulations, to imple-  
16 ment the provisions of this title and the amendments  
17 made by this title, and shall by rule designate States  
18 with laws and procedures that satisfy the criteria  
19 under section 560(d)(2)(A) of title 5, United States  
20 Code.

21 (2) FEDERAL AGENCIES.—Not later than 120  
22 days after the date that the Council on Environ-  
23 mental Quality amends the regulations contained in

1 part 1500 of title 40, Code of Federal Regulations,  
 2 to implement the provisions of this title and the  
 3 amendments made by this title, each Federal agency  
 4 with regulations implementing the National Environ-  
 5 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
 6 shall amend such regulations to implement the pro-  
 7 visions of this subchapter.

8 **TITLE VI—SECURITIES AND EX-**  
 9 **CHANGE COMMISSION REGU-**  
 10 **LATORY ACCOUNTABILITY**

11 **SEC. 601. SHORT TITLE.**

12 This title may be cited as the “SEC Regulatory Ac-  
 13 countability Act”.

14 **SEC. 602. CONSIDERATION BY THE SECURITIES AND EX-**  
 15 **CHANGE COMMISSION OF THE COSTS AND**  
 16 **BENEFITS OF ITS REGULATIONS AND CER-**  
 17 **TAIN OTHER AGENCY ACTIONS.**

18 Section 23 of the Securities Exchange Act of 1934  
 19 (15 U.S.C. 78w) is amended by adding at the end the fol-  
 20 lowing:

21 “(e) CONSIDERATION OF COSTS AND BENEFITS.—

22 “(1) IN GENERAL.—Before issuing a regulation  
 23 under the securities laws, as defined in section 3(a),  
 24 the Commission shall—

1           “(A) clearly identify the nature and source  
2 of the problem that the proposed regulation is  
3 designed to address, as well as assess the sig-  
4 nificance of that problem, to enable assessment  
5 of whether any new regulation is warranted;

6           “(B) utilize the Chief Economist to assess  
7 the costs and benefits, both qualitative and  
8 quantitative, of the intended regulation and  
9 propose or adopt a regulation only on a rea-  
10 soned determination that the benefits of the in-  
11 tended regulation justify the costs of the regula-  
12 tion;

13           “(C) identify and assess available alter-  
14 natives to the regulation that were considered,  
15 including modification of an existing regulation,  
16 together with an explanation of why the regula-  
17 tion meets the regulatory objectives more effec-  
18 tively than the alternatives; and

19           “(D) ensure that any regulation is acces-  
20 sible, consistent, written in plain language, and  
21 easy to understand and shall measure, and seek  
22 to improve, the actual results of regulatory re-  
23 quirements.

24           “(2) CONSIDERATIONS AND ACTIONS.—

1           “(A) REQUIRED ACTIONS.—In deciding  
2 whether and how to regulate, the Commission  
3 shall assess the costs and benefits of available  
4 regulatory alternatives, including the alternative  
5 of not regulating, and choose the approach that  
6 maximizes net benefits. Specifically, the Com-  
7 mission shall—

8           “(i) consistent with the requirements  
9 of section 3(f) (15 U.S.C. 78c(f)), section  
10 2(b) of the Securities Act of 1933 (15  
11 U.S.C. 77b(b)), section 202(c) of the In-  
12 vestment Advisers Act of 1940 (15 U.S.C.  
13 80b-2(c)), and section 2(c) of the Invest-  
14 ment Company Act of 1940 (15 U.S.C.  
15 80a-2(c)), consider whether the rule-  
16 making will promote efficiency, competi-  
17 tion, and capital formation;

18           “(ii) evaluate whether, consistent with  
19 obtaining regulatory objectives, the regula-  
20 tion is tailored to impose the least burden  
21 on society, including market participants,  
22 individuals, businesses of differing sizes,  
23 and other entities (including State and  
24 local governmental entities), taking into ac-

1 count, to the extent practicable, the cumu-  
2 lative costs of regulations; and

3 “(iii) evaluate whether the regulation  
4 is inconsistent, incompatible, or duplicative  
5 of other Federal regulations.

6 “(B) ADDITIONAL CONSIDERATIONS.—In  
7 addition, in making a reasoned determination of  
8 the costs and benefits of a potential regulation,  
9 the Commission shall, to the extent that each is  
10 relevant to the particular proposed regulation,  
11 take into consideration the impact of the regu-  
12 lation on—

13 “(i) investor choice;

14 “(ii) market liquidity in the securities  
15 markets; and

16 “(iii) small businesses

17 “(3) EXPLANATION AND COMMENTS.—The  
18 Commission shall explain in its final rule the nature  
19 of comments that it received, including those from  
20 the industry or consumer groups concerning the po-  
21 tential costs or benefits of the proposed rule or pro-  
22 posed rule change, and shall provide a response to  
23 those comments in its final rule, including an expla-  
24 nation of any changes that were made in response  
25 to those comments and the reasons that the Com-

1 mission did not incorporate those industry group  
2 concerns related to the potential costs or benefits in  
3 the final rule.

4 “(4) REVIEW OF EXISTING REGULATIONS.—Not  
5 later than 1 year after the date of enactment of the  
6 SEC Regulatory Accountability Act, and every 5  
7 years thereafter, the Commission shall review its  
8 regulations to determine whether any such regula-  
9 tions are outmoded, ineffective, insufficient, or ex-  
10 cessively burdensome, and shall modify, streamline,  
11 expand, or repeal them in accordance with such re-  
12 view. In reviewing any regulation (including, not-  
13 withstanding paragraph (6), a regulation issued in  
14 accordance with formal rulemaking provisions) that  
15 subjects issuers with a public float of \$250,000,000  
16 or less to the attestation and reporting requirements  
17 of section 404(b) of the Sarbanes-Oxley Act of 2002  
18 (15 U.S.C. 7262(b)), the Commission shall specifi-  
19 cally take into account the large burden of such reg-  
20 ulation when compared to the benefit of such regula-  
21 tion.

22 “(5) POST-ADOPTION IMPACT ASSESSMENT.—

23 “(A) IN GENERAL.—Whenever the Com-  
24 mission adopts or amends a regulation des-  
25 ignated as a ‘major rule’ within the meaning of

1 section 804(2) of title 5, United States Code, it  
2 shall state, in its adopting release, the fol-  
3 lowing:

4 “(i) The purposes and intended con-  
5 sequences of the regulation.

6 “(ii) Appropriate post-implementation  
7 quantitative and qualitative metrics to  
8 measure the economic impact of the regu-  
9 lation and to measure the extent to which  
10 the regulation has accomplished the stated  
11 purposes.

12 “(iii) The assessment plan that will be  
13 used, consistent with the requirements of  
14 subparagraph (B) and under the super-  
15 vision of the Chief Economist of the Com-  
16 mission, to assess whether the regulation  
17 has achieved the stated purposes.

18 “(iv) Any unintended or negative con-  
19 sequences that the Commission foresees  
20 may result from the regulation.

21 “(B) REQUIREMENTS OF ASSESSMENT  
22 PLAN AND REPORT.—

23 “(i) REQUIREMENTS OF PLAN.—The  
24 assessment plan required under this para-  
25 graph shall consider the costs, benefits,

1 and intended and unintended consequences  
2 of the regulation. The plan shall specify  
3 the data to be collected, the methods for  
4 collection and analysis of the data and a  
5 date for completion of the assessment.

6 “(ii) SUBMISSION AND PUBLICATION  
7 OF REPORT.—The Chief Economist shall  
8 submit the completed assessment report to  
9 the Commission no later than 2 years after  
10 the publication of the adopting release, un-  
11 less the Commission, at the request of the  
12 Chief Economist, has published at least 90  
13 days before such date a notice in the Fed-  
14 eral Register extending the date and pro-  
15 viding specific reasons why an extension is  
16 necessary. Within 7 days after submission  
17 to the Commission of the final assessment  
18 report, it shall be published in the Federal  
19 Register for notice and comment. Any ma-  
20 terial modification of the plan, as nec-  
21 essary to assess unforeseen aspects or con-  
22 sequences of the regulation, shall be  
23 promptly published in the Federal Register  
24 for notice and comment.

1           “(iii) DATA COLLECTION NOT SUB-  
2           JECT TO NOTICE AND COMMENT REQUIRE-  
3           MENTS.—If the Commission has published  
4           its assessment plan for notice and com-  
5           ment, specifying the data to be collected  
6           and method of collection, at least 30 days  
7           prior to adoption of a final regulation or  
8           amendment, such collection of data shall  
9           not be subject to the notice and comment  
10          requirements in section 3506(c) of title 44,  
11          United States Code (commonly referred to  
12          as the Paperwork Reduction Act). Any ma-  
13          terial modifications of the plan that require  
14          collection of data not previously published  
15          for notice and comment shall also be ex-  
16          empt from such requirements if the Com-  
17          mission has published notice for comment  
18          in the Federal Register of the additional  
19          data to be collected, at least 30 days prior  
20          to initiation of data collection.

21          “(iv) FINAL ACTION.—Not later than  
22          180 days after publication of the assess-  
23          ment report in the Federal Register, the  
24          Commission shall issue for notice and com-  
25          ment a proposal to amend or rescind the

1 regulation, or publish a notice that the  
2 Commission has determined that no action  
3 will be taken on the regulation. Such a no-  
4 tice will be deemed a final agency action.

5 “(6) COVERED REGULATIONS AND OTHER  
6 AGENCY ACTIONS.—Solely as used in this subsection,  
7 the term ‘regulation’—

8 “(A) means an agency statement of gen-  
9 eral applicability and future effect that is de-  
10 signed to implement, interpret, or prescribe law  
11 or policy or to describe the procedure or prac-  
12 tice requirements of an agency, including rules,  
13 orders of general applicability, interpretive re-  
14 leases, and other statements of general applica-  
15 bility that the agency intends to have the force  
16 and effect of law; and

17 “(B) does not include—

18 “(i) a regulation issued in accordance  
19 with the formal rulemaking provisions of  
20 section 556 or 557 of title 5, United States  
21 Code;

22 “(ii) a regulation that is limited to  
23 agency organization, management, or per-  
24 sonnel matters;

1           “(iii) a regulation promulgated pursu-  
2           ant to statutory authority that expressly  
3           prohibits compliance with this provision;  
4           and

5           “(iv) a regulation that is certified by  
6           the agency to be an emergency action, if  
7           such certification is published in the Fed-  
8           eral Register.”.

9   **SEC. 603. SENSE OF CONGRESS RELATING TO OTHER REGU-**  
10           **LATORY ENTITIES.**

11       It is the sense of the Congress that other regulatory  
12       entities, including the Public Company Accounting Over-  
13       sight Board, the Municipal Securities Rulemaking Board,  
14       and any national securities association registered under  
15       section 15A of the Securities Exchange Act of 1934 (15  
16       U.S.C. 78o-3) should also follow the requirements of sec-  
17       tion 23(e) of such Act, as added by this title.

18   **SEC. 604. INTERPRETIVE GUIDANCE NULL AND VOID.**

19       Notwithstanding any other provision of law, no inter-  
20       pretive guidance issued by the Securities and Exchange  
21       Commission on or after the effective date of this Act relat-  
22       ing to “Commission Guidance Regarding Disclosure Re-  
23       lated to Climate Change”, affecting parts 211, 231, and  
24       249 of title 17, Code of Federal Regulations (as described  
25       in Commission Release Nos. 33-9106; 34-61469; FR-

1 82), or any successor thereto, may take effect, and such  
2 guidance shall have no force or effect with respect to any  
3 person on or after February 2, 2010.

4 **SEC. 605. OTHER SEC ACTION PROHIBITED.**

5 (a) FURTHER GUIDANCE RELATED TO CLIMATE  
6 CHANGE.—The Commission may not issue any interpre-  
7 tive guidance with respect to disclosures related to climate  
8 change on or after the effective date of this Act.

9 (b) VOLUNTARY SUBMISSIONS.—The Commission  
10 may not issue any interpretive guidance that would estab-  
11 lish any requirements with respect to the content of or  
12 format for any disclosures related to climate change volun-  
13 tarily submitted by any entity to the Commission on or  
14 after the effective date of this Act.

15 (c) CIVIL AND ADMINISTRATIVE ACTIONS.—No civil  
16 or administrative action or proceeding pertaining to disclo-  
17 sures related to climate change may be initiated by the  
18 Commission on or after the date of the enactment of this  
19 Act and any such actions or proceedings pending on such  
20 date shall be terminated.

21 (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed as to—

23 (1) prohibit the Commission from issuing inter-  
24 pretive guidance with respect to disclosures related

1 to non-anthropogenic or natural climate variability  
2 observed over comparable time periods; or

3 (2) terminate an administrative action or pro-  
4 ceeding pertaining to such disclosures.

5 **TITLE VII—CONSIDERATION BY**  
6 **COMMODITY FUTURES TRAD-**  
7 **ING COMMISSION OF CER-**  
8 **TAIN COSTS AND BENEFITS**

9 **SEC. 701. CONSIDERATION BY THE COMMODITY FUTURES**  
10 **TRADING COMMISSION OF THE COSTS AND**  
11 **BENEFITS OF ITS REGULATIONS AND OR-**  
12 **DERS.**

13 Section 15(a) of the Commodity Exchange Act (7  
14 U.S.C. 19(a)) is amended by striking paragraphs (1) and  
15 (2) and inserting the following:

16 “(1) IN GENERAL.—Before promulgating a reg-  
17 ulation under this Act or issuing an order (except as  
18 provided in paragraph (3)), the Commission,  
19 through the Office of the Chief Economist, shall as-  
20 sess the costs and benefits, both qualitative and  
21 quantitative, of the intended regulation and propose  
22 or adopt a regulation only on a reasoned determina-  
23 tion that the benefits of the intended regulation jus-  
24 tify the costs of the intended regulation (recognizing  
25 that some benefits and costs are difficult to quan-

1       tify). It must measure, and seek to improve, the ac-  
2       tual results of regulatory requirements.

3               “(2) CONSIDERATIONS.—In making a reasoned  
4       determination of the costs and the benefits, the  
5       Commission shall evaluate—

6               “(A) considerations of protection of market  
7       participants and the public;

8               “(B) considerations of the efficiency, com-  
9       petitiveness, and financial integrity of futures  
10       and swaps markets;

11              “(C) considerations of the impact on mar-  
12       ket liquidity in the futures and swaps markets;

13              “(D) considerations of price discovery;

14              “(E) considerations of sound risk manage-  
15       ment practices;

16              “(F) available alternatives to direct regula-  
17       tion;

18              “(G) the degree and nature of the risks  
19       posed by various activities within the scope of  
20       its jurisdiction;

21              “(H) whether, consistent with obtaining  
22       regulatory objectives, the regulation is tailored  
23       to impose the least burden on society, including  
24       market participants, individuals, businesses of  
25       differing sizes, and other entities (including

1 small communities and governmental entities),  
2 taking into account, to the extent practicable,  
3 the cumulative costs of regulations;

4 “(I) whether the regulation is inconsistent,  
5 incompatible, or duplicative of other Federal  
6 regulations;

7 “(J) whether, in choosing among alter-  
8 native regulatory approaches, those approaches  
9 maximize net benefits (including potential eco-  
10 nomic, environmental, and other benefits, dis-  
11 tributive impacts, and equity); and

12 “(K) other public interest considerations.”.

13 **TITLE VIII—ENSURING HIGH**  
14 **STANDARDS FOR AGENCY**  
15 **USE OF SCIENTIFIC INFOR-**  
16 **MATION**

17 **SEC. 801. REQUIREMENT FOR FINAL GUIDELINES.**

18 (a) IN GENERAL.—Not later than January 1, 2013,  
19 each Federal agency shall have in effect guidelines for en-  
20 suring and maximizing the quality, objectivity, utility, and  
21 integrity of scientific information relied upon by such  
22 agency.

23 (b) CONTENT OF GUIDELINES.—The guidelines de-  
24 scribed in subsection (a), with respect to a Federal agency,  
25 shall ensure that—

1           (1) when scientific information is considered by  
2 the agency in policy decisions—

3           (A) the information is subject to well-es-  
4 tablished scientific processes, including peer re-  
5 view where appropriate;

6           (B) the agency appropriately applies the  
7 scientific information to the policy decision;

8           (C) except for information that is pro-  
9 tected from disclosure by law or administrative  
10 practice, the agency makes available to the pub-  
11 lic the scientific information considered by the  
12 agency;

13           (D) the agency gives greatest weight to in-  
14 formation that is based on experimental, empir-  
15 ical, quantifiable, and reproducible data that is  
16 developed in accordance with well-established  
17 scientific processes; and

18           (E) with respect to any proposed rule  
19 issued by the agency, such agency follows proce-  
20 dures that include, to the extent feasible and  
21 permitted by law, an opportunity for public  
22 comment on all relevant scientific findings;

23           (2) the agency has procedures in place to make  
24 policy decisions only on the basis of the best reason-  
25 ably obtainable scientific, technical, economic, and

1 other evidence and information concerning the need  
2 for, consequences of, and alternatives to the deci-  
3 sion; and

4 (3) the agency has in place procedures to iden-  
5 tify and address instances in which the integrity of  
6 scientific information considered by the agency may  
7 have been compromised, including instances in which  
8 such information may have been the product of a  
9 scientific process that was compromised.

10 (c) APPROVAL NEEDED FOR POLICY DECISIONS TO  
11 TAKE EFFECT.—No policy decision issued after January  
12 1, 2013, by an agency subject to this section may take  
13 effect prior to such date that the agency has in effect  
14 guidelines under subsection (a) that have been approved  
15 by the Director of the Office of Science and Technology  
16 Policy.

17 (d) POLICY DECISIONS NOT IN COMPLIANCE.—A  
18 policy decision of an agency that does not comply with  
19 guidelines approved under subsection (c) shall be deemed  
20 to be arbitrary, capricious, an abuse of discretion, and oth-  
21 erwise not in accordance with law.

22 (e) DEFINITIONS.—For purposes of this section:

23 (1) AGENCY.—The term “agency” has the  
24 meaning given such term in section 551(1) of title  
25 5, United States Code.

1           (2) POLICY DECISION.—The term “policy deci-  
2           sion” means, with respect to an agency, an agency  
3           action as defined in section 551(13) of title 5,  
4           United States Code, (other than an adjudication, as  
5           defined in section 551(7) of such title), and in-  
6           cludes—

7                   (A) the listing, labeling, or other identifica-  
8                   tion of a substance, product, or activity as haz-  
9                   ardous or creating risk to human health, safety,  
10                  or the environment; and

11                  (B) agency guidance.

12           (3) AGENCY GUIDANCE.—The term “agency  
13           guidance” means an agency statement of general ap-  
14           plicability and future effect, other than a regulatory  
15           action, that sets forth a policy on a statutory, regu-  
16           latory, or technical issue or on an interpretation of  
17           a statutory or regulatory issue.

18 **TITLE IX—TRACKING THE COST**  
19 **TO TAXPAYERS OF FEDERAL**  
20 **LITIGATION**

21 **SEC. 901. SHORT TITLE.**

22           This title may be cited as the “Tracking the Cost to  
23 Taxpayers of Federal Litigation Act”.

1 **SEC. 902. MODIFICATION OF EQUAL ACCESS TO JUSTICE**  
2 **PROVISIONS.**

3 (a) AGENCY PROCEEDINGS.—Section 504 of title 5,  
4 United States Code, is amended—

5 (1) in subsection (c)(1), by striking “, United  
6 States Code”; and

7 (2) by striking subsections (e) and (f) and in-  
8 serting the following:

9 “(e)(1) The Chairman of the Administrative Con-  
10 ference of the United States, after consultation with the  
11 Chief Counsel for Advocacy of the Small Business Admin-  
12 istration, shall report annually to the Congress on the  
13 amount of fees and other expenses awarded during the  
14 preceding fiscal year pursuant to this section. The report  
15 shall describe the number, nature, and amount of the  
16 awards, the claims involved in the controversy, and any  
17 other relevant information that may aid the Congress in  
18 evaluating the scope and impact of such awards. Each  
19 agency shall provide the Chairman in a timely manner all  
20 information necessary for the Chairman to comply with  
21 the requirements of this subsection. The report shall be  
22 made available to the public online.

23 “(2)(A) The report required by paragraph (1) shall  
24 account for all payments of fees and other expenses  
25 awarded under this section that are made pursuant to a  
26 settlement agreement, regardless of whether the settle-

1 ment agreement is sealed or otherwise subject to non-  
2 disclosure provisions, except that any version of the report  
3 made available to the public may not reveal any informa-  
4 tion the disclosure of which is contrary to the national se-  
5 curity of the United States.

6 “(B) The disclosure of fees and other expenses re-  
7 quired under subparagraph (A) does not affect any other  
8 information that is subject to nondisclosure provisions in  
9 the settlement agreement.

10 “(f) The Chairman of the Administrative Conference  
11 shall create and maintain online a searchable database  
12 containing the following information with respect to each  
13 award of fees and other expenses under this section:

14 “(1) The name of each party to whom the  
15 award was made.

16 “(2) The name of each counsel of record rep-  
17 resenting each party to whom the award was made.

18 “(3) The agency to which the application for  
19 the award was made.

20 “(4) The name of each counsel of record rep-  
21 resenting the agency to which the application for the  
22 award was made.

23 “(5) The name of each administrative law  
24 judge, and the name of any other agency employee  
25 serving in an adjudicative role, in the adversary ad-

1       judication that is the subject of the application for  
2       the award.

3               “(6) The amount of the award.

4               “(7) The names and hourly rates of each expert  
5       witness for whose services the award was made  
6       under the application.

7               “(8) The basis for the finding that the position  
8       of the agency concerned was not substantially justi-  
9       fied.

10              “(g) The online searchable database described in sub-  
11      section (f) may not reveal any information the disclosure  
12      of which is prohibited by law or court order, or the dislo-  
13      sure of which is contrary to the national security of the  
14      United States.”.

15              (b) COURT CASES.—Section 2412(d) of title 28,  
16      United States Code, is amended by adding at the end the  
17      following:

18              “(5)(A) The Chairman of the Administrative Con-  
19      ference of the United States shall report annually to the  
20      Congress on the amount of fees and other expenses award-  
21      ed during the preceding fiscal year pursuant to this sub-  
22      section. The report shall describe the number, nature, and  
23      amount of the awards, the claims involved in each con-  
24      troversy, and any other relevant information which may  
25      aid the Congress in evaluating the scope and impact of

1 such awards. Each agency shall provide the Chairman  
2 with such information as is necessary for the Chairman  
3 to comply with the requirements of this paragraph. The  
4 report shall be made available to the public online.

5       “(B)(i) The report required by subparagraph (A)  
6 shall account for all payments of fees and other expenses  
7 awarded under this subsection that are made pursuant to  
8 a settlement agreement, regardless of whether the settle-  
9 ment agreement is sealed or otherwise subject to non-  
10 disclosure provisions, except that any version of the report  
11 made available to the public may not reveal any informa-  
12 tion the disclosure of which is contrary to the national se-  
13 curity of the United States.

14       “(ii) The disclosure of fees and other expenses re-  
15 quired under clause (i) does not affect any other informa-  
16 tion that is subject to nondisclosure provisions in the set-  
17 tlement agreement.

18       “(C) The Chairman of the Administrative Conference  
19 shall include and clearly identify in the annual report  
20 under subparagraph (A), for each case in which an award  
21 of fees and other expenses is included in the report—

22               “(i) any amounts paid from section 1304 of  
23 title 31 for a judgment in the case;

24               “(ii) the amount of the award of fees and other  
25 expenses; and

1           “(iii) the statute under which the plaintiff filed  
2       suit.

3           “(6) The Chairman of the Administrative Conference  
4 shall create and maintain online a searchable database  
5 containing the following information with respect to each  
6 award of fees and other expenses under this subsection:

7           “(A) The name of each party to whom the  
8       award was made.

9           “(B) The name of each counsel of record rep-  
10       resenting each party to whom the award was made.

11          “(C) The agency involved in the case.

12          “(D) The name of each counsel of record rep-  
13       resenting the agency involved in the case.

14          “(E) The name of each judge in the case, and  
15       the court in which the case was heard.

16          “(F) The amount of the award.

17          “(G) The names and hourly rates of each ex-  
18       pert witness for whose services the award was made.

19          “(H) The basis for the finding that the position  
20       of the agency concerned was not substantially justi-  
21       fied.

22          “(7) The online searchable database described in  
23       paragraph (6) may not reveal any information the disclo-  
24       sure of which is prohibited by law or court order, or the

1 disclosure of which is contrary to the national security of  
2 the United States.

3 “(8) The Attorney General of the United States shall  
4 provide to the Chairman of the Administrative Conference  
5 of the United States in a timely manner all information  
6 necessary for the Chairman to carry out the Chairman’s  
7 responsibilities under this subsection.”.

8 (c) CLERICAL AMENDMENT.—Section 2412(e) of title  
9 28, United States Code, is amended by striking “of section  
10 2412 of title 28, United States Code,” and inserting “of  
11 this section”.

Passed the House of Representatives July 26, 2012.

Attest:

*Clerk.*

112<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4078

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## AN ACT

To provide that no agency may take any significant regulatory action until the unemployment rate is equal to or less than 6.0 percent.