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112TH CONGRESS
2D SESSION**H. R. 4078**

IN THE SENATE OF THE UNITED STATES

JULY 30, 2012

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JULY 31, 2012

Read the second time and placed on the calendar

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. TABLE OF CONTENTS.**

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

Sec. 1. Short title.

Sec. 2. Table of contents.

- Sec. 101. Short title.
- Sec. 102. Moratorium on significant regulatory actions.
- Sec. 103. Waivers and exceptions.
- Sec. 104. Judicial review.
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- Sec. 201. Short title.
- Sec. 202. Moratorium on midnight rules.
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- Sec. 407. Applying substantive point of order to private sector mandates.
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- Sec. 411. New authorities and responsibilities for Office of Information and Regulatory Affairs.
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TITLE V—IMPROVED COORDINATION OF AGENCY ACTIONS ON ENVIRONMENTAL DOCUMENTS

- Sec. 501. Short title.
- Sec. 502. Coordination of agency administrative operations for efficient decisionmaking.

TITLE VI—SECURITIES AND EXCHANGE COMMISSION REGULATORY ACCOUNTABILITY

- Sec. 601. Short title.

Sec. 602. Consideration by the Securities and Exchange Commission of the costs and benefits of its regulations and certain other agency actions.

Sec. 603. Sense of Congress relating to other regulatory entities.

Sec. 604. Interpretive guidance null and void.

Sec. 605. Other SEC action prohibited.

TITLE VII—CONSIDERATION BY COMMODITY FUTURES TRADING COMMISSION OF CERTAIN COSTS AND BENEFITS

Sec. 701. Consideration by the Commodity Futures Trading Commission of the costs and benefits of its regulations and orders.

TITLE VIII—ENSURING HIGH STANDARDS FOR AGENCY USE OF SCIENTIFIC INFORMATION

Sec. 801. Requirement for final guidelines.

TITLE IX—TRACKING THE COST TO TAXPAYERS OF FEDERAL LITIGATION

Sec. 901. Short title.

Sec. 902. Modification of equal access to justice provisions.

1 **TITLE I—REGULATORY FREEZE** 2 **FOR JOBS**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Regulatory Freeze for
5 Jobs Act of 2012”.

6 **SEC. 102. MORATORIUM ON SIGNIFICANT REGULATORY AC-** 7 **TIONS.**

8 (a) MORATORIUM.—An agency may not take any sig-
9 nificant regulatory action during the period beginning on
10 the date of the enactment of this Act and ending on the
11 date that the Secretary of Labor submits the report under
12 subsection (b).

13 (b) DETERMINATION.—The Secretary of Labor shall
14 submit a report to the Director of the Office of Manage-
15 ment and Budget when the Secretary determines that the

1 Bureau of Labor Statistics average of monthly unemploy-
2 ment rates for any quarter beginning after the date of the
3 enactment of this Act is equal to or less than 6.0 percent.

4 **SEC. 103. WAIVERS AND EXCEPTIONS.**

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

9 (b) PRESIDENTIAL WAIVER.—An agency may take a
10 significant regulatory action if the President determines
11 by Executive Order that the significant regulatory action
12 is—

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

15 (2) necessary for the enforcement of criminal or
16 civil rights laws;

17 (3) necessary for the national security of the
18 United States; or

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

21 (c) DEREGULATORY EXCEPTION.—An agency may
22 take a significant regulatory action if the Administrator
23 of the Office of Information and Regulatory Affairs of the
24 Office of Management and Budget certifies in writing that

1 the significant regulatory action is limited to repealing an
2 existing rule.

3 (d) CONGRESSIONAL WAIVERS.—

4 (1) SUBMISSION.—For any significant regu-
5 latory action not eligible for a Presidential waiver
6 pursuant to subsection (b), the President may sub-
7 mit a written request to Congress for a waiver of the
8 application of section 102 for such action.

9 (2) CONTENTS.—A submission by the President
10 under this subsection shall—

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

13 (B) describe all the reasons the significant
14 regulatory action is necessary to protect the
15 public health, safety, or welfare; and

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

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

23 **SEC. 104. JUDICIAL REVIEW.**

24 (a) REVIEW.—Any party adversely affected or ag-
25 grieved by any rule or guidance resulting from a regu-

1 latory action taken in violation of this title is entitled to
2 judicial review in accordance with chapter 7 of title 5,
3 United States Code. Any determination by either the
4 President or the Secretary of Labor under this title shall
5 be subject to judicial review under such chapter.

6 (b) JURISDICTION.—Each court having jurisdiction
7 to review any rule or guidance resulting from a significant
8 regulatory action for compliance with any other provision
9 of law shall have jurisdiction to review all claims under
10 this title.

11 (c) RELIEF.—In granting any relief in any civil ac-
12 tion under this section, the court shall order the agency
13 to take corrective action consistent with this title and
14 chapter 7 of title 5, United States Code, including re-
15 manding the rule or guidance resulting from the signifi-
16 cant regulatory action to the agency and enjoining the ap-
17 plication or enforcement of that rule or guidance, unless
18 the court finds by a preponderance of the evidence that
19 application or enforcement is required to protect against
20 an imminent and serious threat to the national security
21 of the United States.

22 (d) REASONABLE ATTORNEY'S FEES FOR SMALL
23 BUSINESSES.—The court shall award reasonable attor-
24 ney's fees and costs to a substantially prevailing small
25 business in any civil action arising under this title. A small

1 business may qualify as substantially prevailing even with-
 2 out obtaining a final judgment in its favor if the agency
 3 that took the significant regulatory action changes its po-
 4 sition after the civil action is filed. Such award shall be
 5 paid out of the administrative budget of the office in the
 6 agency that took the challenged agency action.

7 (e) LIMITATION ON COMMENCING CIVIL ACTION.—
 8 A party may seek and obtain judicial review during the
 9 1-year period beginning on the date of the challenged
 10 agency action or within 90 days after an enforcement ac-
 11 tion or notice thereof, except that where another provision
 12 of law requires that a civil action be commenced before
 13 the expiration of that 1-year period, such lesser period
 14 shall apply.

15 (f) SMALL BUSINESS DEFINED.—In this section, the
 16 term “small business” means any business, including an
 17 unincorporated business or a sole proprietorship, that em-
 18 ploys not more than 500 employees or that has a net
 19 worth of less than \$7,000,000 on the date a civil action
 20 arising under this title is filed.

21 **SEC. 105. DEFINITIONS.**

22 In this title:

23 (1) AGENCY.—The term “agency” has the
 24 meaning given that term under section 551 of title

1 5, United States Code, except that such term does
2 not include—

3 (A) the Board of Governors of the Federal
4 Reserve System;

5 (B) the Federal Open Market Committee;
6 or

7 (C) the United States Postal Service.

8 (2) REGULATORY ACTION.—The term “regu-
9 latory action” means any substantive action by an
10 agency that promulgates or is expected to lead to the
11 promulgation of a final rule or regulation, including
12 a notice of inquiry, an advance notice of proposed
13 rulemaking, and a notice of proposed rulemaking.

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

17 (4) SIGNIFICANT REGULATORY ACTION.—The
18 term “significant regulatory action” means any reg-
19 ulatory action that is likely to result in a rule or
20 guidance that the Administrator of the Office of In-
21 formation and Regulatory Affairs of the Office of
22 Management and Budget finds is likely to have an
23 annual cost to the economy of \$50,000,000 or more
24 or adversely affect in a material way the economy,
25 a sector of the economy, productivity, competition,

1 jobs, the environment, public health or safety, small
2 entities, or State, local, or tribal governments or
3 communities. In determining the annual cost to the
4 economy under this paragraph, the Administrator
5 shall take into account any expected change in rev-
6 enue of businesses that will be caused by such regu-
7 latory action, as well as any change in revenue of
8 businesses that has already taken place as busi-
9 nesses prepare for the implementation of the regu-
10 latory action. If meeting that definition, such term
11 includes any requirement by the Secretary of the
12 Treasury, except to the extent provided in Treasury
13 Regulations as in effect on February 21, 2011, that
14 a payor of interest make an information return in
15 the case of interest—

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

18 (2) which is paid—

19 (A) to a nonresident alien, and

20 (B) on a deposit maintained at an office
21 within the United States.

22 (5) SMALL ENTITY.—The term “small entity”
23 has the meaning given that term under section
24 601(6) of title 5, United States Code.

TITLE II—MIDNIGHT RULE RELIEF

SEC. 201. SHORT TITLE.

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

SEC. 202. MORATORIUM ON MIDNIGHT RULES.

Except as provided under sections 203 and 204, during the moratorium period, an agency may not propose or finalize any midnight rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds is likely to result in an annual cost to the economy of \$50,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, small entities, or State, local, or tribal governments or communities.

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

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

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

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

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

3 (b) PUBLICATION OF DEADLINES.—Not later than
4 30 days after the beginning of a moratorium period, the
5 Administrator of the Office of Information and Regulatory
6 Affairs of the Office of Management and Budget shall
7 identify and publish in the Federal Register a list of dead-
8 lines covered by subsection (a).

9 **SEC. 204. EXCEPTION.**

10 (a) EMERGENCY EXCEPTION.—Section 202 shall not
11 apply to a midnight rule if the President determines that
12 the midnight rule is—

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

15 (2) necessary for the enforcement of criminal or
16 civil rights laws;

17 (3) necessary for the national security of the
18 United States; or

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

21 (b) DEREGULATORY EXCEPTION.—Section 202 shall
22 not apply to a midnight rule that the Administrator of
23 the Office of Information and Regulatory Affairs within
24 the Office of Management and Budget certifies in writing
25 is limited to repealing an existing rule.

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

7 **SEC. 205. DEFINITIONS.**

8 In this title:

9 (1) AGENCY.—The term “agency” has the
10 meaning given that term under section 551 of title
11 5, United States Code, except that such term does
12 not include—

13 (A) the Board of Governors of the Federal
14 Reserve System;

15 (B) the Federal Open Market Committee;

16 or

17 (C) the United States Postal Service.

18 (2) DEADLINE.—The term “deadline” means
19 any date certain for fulfilling any obligation or exer-
20 cising any authority established by or under any
21 Federal statute or rule, or by or under any court
22 order implementing any Federal statute, regulation,
23 or rule.

24 (3) MORATORIUM PERIOD.—The term “morato-
25 rium period” means the day after the day referred

1 to in section 1 of title 3, United States Code,
2 through January 20 of the following year, in which
3 a President is not serving a consecutive term.

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

9 (A) to implement, interpret, or prescribe
10 law or policy; or

11 (B) to describe the procedure or practice
12 requirements of an agency.

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

16 (6) SMALL ENTITY.—The term “small entity”
17 has the meaning given that term under section
18 601(6) of title 5, United States Code.

19 **TITLE III—REGULATORY**

20 **DECREES AND SETTLEMENTS**

21 **SEC. 301. SHORT TITLE.**

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

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

2 (a) APPLICATION.—The provisions of this section
3 apply in the case of—

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

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

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

14 (2) any other consent decree or settlement
15 agreement that requires agency action that pertains
16 to a regulatory action that affects the rights of pri-
17 vate parties other than the plaintiff or the rights of
18 State, local or Tribal government entities.

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

22 (1) The complaint in the action, the consent de-
23 cree or settlement agreement, the statutory basis for
24 the consent decree or settlement agreement and its
25 terms, and any award of attorneys' fees or costs

1 shall be published, including electronically, in a read-
2 ily accessible manner by the defendant agency.

3 (2) Until the conclusion of an opportunity for
4 affected parties to intervene in the action, a party
5 may not file with the court a motion for a consent
6 decree or to dismiss the case pursuant to a settle-
7 ment agreement.

8 (3) In considering a motion to intervene by any
9 party that would be affected by the agency action in
10 dispute, the court shall presume, subject to rebuttal,
11 that the interests of that party would not be rep-
12 resented adequately by the current parties to the ac-
13 tion. In considering a motion to intervene filed by a
14 State, local or Tribal government entity, the court
15 shall take due account of whether the movant—

16 (A) administers jointly with the defendant
17 agency the statutory provisions that give rise to
18 the regulatory duty alleged in the complaint; or

19 (B) administers State, local or Tribal regu-
20 latory authority that would be preempted by the
21 defendant agency's discharge of the regulatory
22 duty alleged in the complaint.

23 (4) If the court grants a motion to intervene in
24 the action, the court shall include the plaintiff, the
25 defendant agency, and the intervenors in settlement

1 discussions. Settlement efforts conducted shall be
2 pursuant to a court's mediation or alternative dis-
3 pute resolution program, or by a district judge, mag-
4 istrate judge, or special master, as determined by
5 the assigned judge.

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

16 (6) The defendant agency shall—

17 (A) respond to public comments received
18 under paragraph (5); and

19 (B) when moving that the court enter the
20 consent decree or for dismissal pursuant to the
21 settlement agreement—

22 (i) inform the court of the statutory
23 basis for the proposed consent decree or
24 settlement agreement and its terms;

- 1 (ii) submit to the court a summary of
2 the public comments and agency responses;
3 (iii) certify the index to the adminis-
4 trative record of the notice and comment
5 proceeding to the court; and
6 (iv) make that record fully accessible
7 to the court.

8 (7) The court shall include in the judicial
9 record the full administrative record, the index to
10 which was certified by the agency under paragraph
11 (6).

12 (8) If the consent decree or settlement agree-
13 ment requires an agency action by a date certain,
14 the agency shall, when moving for entry of the con-
15 sent decree or dismissal based on the settlement
16 agreement—

17 (A) inform the court of any uncompleted
18 mandatory duties to take regulatory action that
19 the decree or agreement does not address;

20 (B) how the decree or agreement, if ap-
21 proved, would affect the discharge of those du-
22 ties; and

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

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

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

15 (11) The defendant agency may, at its discre-
16 tion, hold a public hearing pursuant to notice in the
17 Federal Register and by electronic means, on wheth-
18 er to enter into the consent decree or settlement
19 agreement. If such a hearing is held, then, in ac-
20 cordance with paragraph (6), the agency shall sub-
21 mit to the court a summary of the proceedings and
22 the certified index to the hearing record, full access
23 to the hearing record shall be given to the court, and
24 the full hearing record shall be included in the judi-
25 cial record.

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

8 (A) in the case of a consent decree, terms
9 that—

10 (i) convert into mandatory duties the
11 otherwise discretionary authorities of an
12 agency to propose, promulgate, revise or
13 amend regulations;

14 (ii) commit the agency to expend
15 funds that Congress has not appropriated
16 and that have not been budgeted for the
17 action in question, or commit an agency to
18 seek a particular appropriation or budget
19 authorization;

20 (iii) divest the agency of discretion
21 committed to it by Congress or the Con-
22 stitution, whether such discretionary power
23 was granted to respond to changing cir-
24 cumstances, to make policy or managerial

1 choices, or to protect the rights of third
2 parties; or

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

6 (B) in the case of a settlement agreement,
7 terms that—

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

16 (ii) commit the agency to expend
17 funds that Congress has not appropriated
18 and that have not been budgeted for the
19 action in question; or

20 (iii) provide a remedy for the agency's
21 failure to comply with the terms of the set-
22 tlement agreement other than the revival
23 of the action resolved by the settlement
24 agreement, if the agreement commits the
25 agency to exercise its discretion in a par-

1 ticular way and such discretionary power
2 was committed to the agency by Congress
3 or the Constitution to respond to changing
4 circumstances, to make policy or manage-
5 rial choices, or to protect the rights of
6 third parties.

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

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

15 When a defendant agency moves the court to modify
16 a previously entered consent decree described under sec-
17 tion 302 and the basis of the motion is that the terms
18 of the decree are no longer fully in the public interest due
19 to the agency's obligations to fulfill other duties or due
20 to changed facts and circumstances, the court shall review
21 the motion and the consent decree de novo.

22 **SEC. 304. EFFECTIVE DATE.**

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

1 **TITLE IV—UNFUNDED MAN-**
2 **DATES INFORMATION AND**
3 **TRANSPARENCY**

4 **SEC. 401. SHORT TITLE.**

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

7 **SEC. 402. PURPOSE.**

8 The purpose of this title is—

9 (1) to improve the quality of the deliberations
10 of Congress with respect to proposed Federal man-
11 dates by—

12 (A) providing Congress and the public with
13 more complete information about the effects of
14 such mandates; and

15 (B) ensuring that Congress acts on such
16 mandates only after focused deliberation on
17 their effects; and

18 (2) to enhance the ability of Congress and the
19 public to identify Federal mandates that may impose
20 undue harm on consumers, workers, employers,
21 small businesses, and State, local, and tribal govern-
22 ments.

1 **SEC. 403. PROVIDING FOR CONGRESSIONAL BUDGET OF-**
2 **FICE STUDIES ON POLICIES INVOLVING**
3 **CHANGES IN CONDITIONS OF GRANT AID.**

4 Section 202(g) of the Congressional Budget Act of
5 1974 (2 U.S.C. 602(g)) is amended by adding at the end
6 the following new paragraph:

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

20 **SEC. 404. CLARIFYING THE DEFINITION OF DIRECT COSTS**
21 **TO REFLECT CONGRESSIONAL BUDGET OF-**
22 **FICE PRACTICE.**

23 Section 421(3) of the Congressional Budget Act of
24 1974 (2 U.S.C. 658(3)(A)(i)) is amended—

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

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

6 **SEC. 405. EXPANDING THE SCOPE OF REPORTING RE-**
7 **QUIREMENTS TO INCLUDE REGULATIONS IM-**
8 **POSED BY INDEPENDENT REGULATORY**
9 **AGENCIES.**

10 Paragraph (1) of section 421 of the Congressional
11 Budget Act of 1974 (2 U.S.C. 658) is amended by striking
12 “, but does not include independent regulatory agencies”
13 and inserting “, except it does not include the Board of
14 Governors of the Federal Reserve System or the Federal
15 Open Market Committee”.

16 **SEC. 406. AMENDMENTS TO REPLACE OFFICE OF MANAGE-**
17 **MENT AND BUDGET WITH OFFICE OF INFOR-**
18 **MATION AND REGULATORY AFFAIRS.**

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

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

22 (A) in the subsection heading, by striking
23 “OFFICE OF MANAGEMENT AND BUDGET” and
24 inserting “OFFICE OF INFORMATION AND REG-
25 ULATORY AFFAIRS”; and

1 (B) by striking “Director of the Office of
2 Management and Budget” and inserting “Ad-
3 ministrator of the Office of Information and
4 Regulatory Affairs”;
5 (2) in section 205(c) (2 U.S.C. 1535(c))—

6 (A) in the subsection heading, by striking
7 “OMB”; and

8 (B) by striking “Director of the Office of
9 Management and Budget” and inserting “Ad-
10 ministrator of the Office of Information and
11 Regulatory Affairs”; and

12 (3) in section 206 (2 U.S.C. 1536), by striking
13 “Director of the Office of Management and Budget”
14 and inserting “Administrator of the Office of Infor-
15 mation and Regulatory Affairs”.

16 **SEC. 407. APPLYING SUBSTANTIVE POINT OF ORDER TO**
17 **PRIVATE SECTOR MANDATES.**

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

20 (1) by striking “Federal intergovernmental
21 mandates” and inserting “Federal mandates”; and

22 (2) by inserting “or 424(b)(1)” after “section
23 424(a)(1)”.

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

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

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

5 “(a) IN GENERAL.—Each agency shall, unless other-
6 wise expressly prohibited by law, assess the effects of Fed-
7 eral regulatory actions on State, local, and tribal govern-
8 ments and the private sector (other than to the extent that
9 such regulatory actions incorporate requirements specifi-
10 cally set forth in law) in accordance with the following
11 principles:

12 “(1) Each agency shall identify the problem
13 that it intends to address (including, if applicable,
14 the failures of private markets or public institutions
15 that warrant new agency action) as well as assess
16 the significance of that problem.

17 “(2) Each agency shall examine whether exist-
18 ing regulations (or other law) have created, or con-
19 tributed to, the problem that a new regulation is in-
20 tended to correct and whether those regulations (or
21 other law) should be modified to achieve the in-
22 tended goal of regulation more effectively.

23 “(3) Each agency shall identify and assess
24 available alternatives to direct regulation, including
25 providing economic incentives to encourage the de-
26 sired behavior, such as user fees or marketable per-

1 mits, or providing information upon which choices
2 can be made by the public.

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

12 “(5) Each agency shall assess both the costs
13 and the benefits of the intended regulation and, rec-
14 ognizing that some costs and benefits are difficult to
15 quantify, propose or adopt a regulation, unless ex-
16 pressly prohibited by law, only upon a reasoned de-
17 termination that the benefits of the intended regula-
18 tion justify its costs.

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

23 “(7) Each agency shall identify and assess al-
24 ternative forms of regulation and shall, to the extent
25 feasible, specify performance objectives, rather than

1 specifying the behavior or manner of compliance
2 that regulated entities must adopt.

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

6 “(9) Each agency shall tailor its regulations to
7 minimize the costs of the cumulative impact of regu-
8 lations.

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

13 “(b) REGULATORY ACTION DEFINED.—In this sec-
14 tion, the term ‘regulatory action’ means any substantive
15 action by an agency (normally published in the Federal
16 Register) that promulgates or is expected to lead to the
17 promulgation of a final rule or regulation, including ad-
18 vance notices of proposed rulemaking and notices of pro-
19 posed rulemaking.”.

20 **SEC. 409. EXPANDING THE SCOPE OF STATEMENTS TO AC-**
21 **COMPANY SIGNIFICANT REGULATORY AC-**
22 **TIONS.**

23 (a) IN GENERAL.—Subsection (a) of section 202 of
24 the Unfunded Mandates Reform Act of 1995 (2 U.S.C.
25 1532) is amended to read as follows:

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

11 “(1) The text of the draft proposed rulemaking
12 or final rule, together with a reasonably detailed de-
13 scription of the need for the proposed rulemaking or
14 final rule and an explanation of how the proposed
15 rulemaking or final rule will meet that need.

16 “(2) An assessment of the potential costs and
17 benefits of the proposed rulemaking or final rule, in-
18 cluding an explanation of the manner in which the
19 proposed rulemaking or final rule is consistent with
20 a statutory requirement and avoids undue inter-
21 ference with State, local, and tribal governments in
22 the exercise of their governmental functions.

23 “(3) A qualitative and quantitative assessment,
24 including the underlying analysis, of benefits antici-
25 pated from the proposed rulemaking or final rule

1 (such as the promotion of the efficient functioning of
2 the economy and private markets, the enhancement
3 of health and safety, the protection of the natural
4 environment, and the elimination or reduction of dis-
5 crimination or bias).

6 “(4) A qualitative and quantitative assessment,
7 including the underlying analysis, of costs antici-
8 pated from the proposed rulemaking or final rule
9 (such as the direct costs both to the Government in
10 administering the final rule and to businesses and
11 others in complying with the final rule, and any ad-
12 verse effects on the efficient functioning of the econ-
13 omy, private markets (including productivity, em-
14 ployment, and international competitiveness), health,
15 safety, and the natural environment);

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

19 “(A) the future compliance costs of the
20 Federal mandate; and

21 “(B) any disproportionate budgetary ef-
22 fects of the Federal mandate upon any par-
23 ticular regions of the nation or particular State,
24 local, or tribal governments, urban or rural or

1 other types of communities, or particular seg-
2 ments of the private sector.

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

7 “(B) A detailed summary of the comments and
8 concerns that were presented by the private sector
9 and State, local, or tribal governments either orally
10 or in writing to the agency.

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

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

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

19 **SEC. 410. ENHANCED STAKEHOLDER CONSULTATION.**

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

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

24 (2) in subsection (a)—

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

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

7 (3) by amending subsection (c) to read as fol-
8 lows:

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

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

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

22 “(3) Agencies should estimate benefits and
23 costs to assist with these consultations. The scope of
24 the consultation should reflect the cost and signifi-
25 cance of the Federal mandate being considered.

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

2 “(A) seek out the views of State, local, and
3 tribal governments, and impacted parties within
4 the private sector (including small business), on
5 costs, benefits, and risks; and

6 “(B) solicit ideas about alternative meth-
7 ods of compliance and potential flexibilities, and
8 input on whether the Federal regulation will
9 harmonize with and not duplicate similar laws
10 in other levels of government.

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

13 “(6) Agencies may accept electronic submis-
14 sions of comments by relevant parties but may not
15 use those comments as the sole method of satisfying
16 the guidelines in this subsection.”.

17 **SEC. 411. NEW AUTHORITIES AND RESPONSIBILITIES FOR**
18 **OFFICE OF INFORMATION AND REGULATORY**
19 **AFFAIRS.**

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

22 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**
23 **FAIRS RESPONSIBILITIES.**

24 “(a) IN GENERAL.—The Administrator of the Office
25 of Information and Regulatory Affairs shall provide mean-

1 ingful guidance and oversight so that each agency’s regu-
2 lations for which a written statement is required under
3 section 202 are consistent with the principles and require-
4 ments of this title, as well as other applicable laws, and
5 do not conflict with the policies or actions of another agen-
6 cy. If the Administrator determines that an agency’s regu-
7 lations for which a written statement is required under
8 section 202 do not comply with such principles and re-
9 quirements, are not consistent with other applicable laws,
10 or conflict with the policies or actions of another agency,
11 the Administrator shall identify areas of non-compliance,
12 notify the agency, and request that the agency comply be-
13 fore the agency finalizes the regulation concerned.

14 “(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-
15 CY COMPLIANCE.—The Director of the Office of Informa-
16 tion and Regulatory Affairs annually shall submit to Con-
17 gress, including the Committee on Homeland Security and
18 Governmental Affairs of the Senate and the Committee
19 on Oversight and Government Reform of the House of
20 Representatives, a written report detailing compliance by
21 each agency with the requirements of this title that relate
22 to regulations for which a written statement is required
23 by section 202, including activities undertaken at the re-
24 quest of the Director to improve compliance, during the
25 preceding reporting period. The report shall also contain

1 an appendix detailing compliance by each agency with sec-
2 tion 204.”.

3 **SEC. 412. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
4 **ERAL REGULATIONS.**

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

7 (1) by redesignating section 209 as section 210;
8 and

9 (2) by inserting after section 208 the following
10 new section 209:

11 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
12 **ERAL REGULATIONS.**

13 “(a) REQUIREMENT.—At the request of the chairman
14 or ranking minority member of a standing or select com-
15 mittee of the House of Representatives or the Senate, an
16 agency shall conduct a retrospective analysis of an existing
17 Federal regulation promulgated by an agency.

18 “(b) REPORT.—Each agency conducting a retrospec-
19 tive analysis of existing Federal regulations pursuant to
20 subsection (a) shall submit to the chairman of the relevant
21 committee, Congress, and the Comptroller General a re-
22 port containing, with respect to each Federal regulation
23 covered by the analysis—

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

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

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

6 “(4) the extent to which the Federal regulation
7 overlaps, duplicates, or conflicts with other Federal
8 regulations, and, to the extent feasible, with State
9 and local governmental rules;

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

13 “(6) a complete analysis of the retrospective di-
14 rect costs and benefits of the Federal regulation that
15 considers studies done outside the Federal Govern-
16 ment (if any) estimating such costs or benefits; and

17 “(7) any litigation history challenging the Fed-
18 eral regulation.”.

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

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

22 (1) in paragraphs (1) and (2)(A)—

23 (A) by striking “sections 202 and
24 203(a)(1) and (2)” each place it appears and

1 inserting “sections 201, 202, 203(a)(1) and (2),
2 and 205(a) and (b)”;

3 (B) by striking “only” each place it ap-
4 pears;

5 (2) in paragraph (2)(B), by striking “section
6 202” and all that follows through the period at the
7 end and inserting the following: “section 202, pre-
8 pare the written plan under section 203(a)(1) and
9 (2), or comply with section 205(a) and (b), a court
10 may compel the agency to prepare such written
11 statement, prepare such written plan, or comply with
12 such section.”; and

13 (3) in paragraph (3), by striking “written state-
14 ment or plan is required” and all that follows
15 through “shall not” and inserting the following:
16 “written statement under section 202, a written plan
17 under section 203(a)(1) and (2), or compliance with
18 sections 201 and 205(a) and (b) is required, the in-
19 adequacy or failure to prepare such statement (in-
20 cluding the inadequacy or failure to prepare any es-
21 timate, analysis, statement, or description), to pre-
22 pare such written plan, or to comply with such sec-
23 tion may”.

1 **TITLE V—IMPROVED COORDINA-**
 2 **TION OF AGENCY ACTIONS ON**
 3 **ENVIRONMENTAL DOCU-**
 4 **MENTS**

5 **SEC. 501. SHORT TITLE.**

6 This title may be cited as the “Responsibly And Pro-
 7 fessionally Invigorating Development Act of 2012” or as
 8 the “RAPID Act”.

9 **SEC. 502. COORDINATION OF AGENCY ADMINISTRATIVE OP-**
 10 **ERATIONS FOR EFFICIENT DECISIONMAKING.**

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

14 “SUBCHAPTER IIA—INTERAGENCY
 15 COORDINATION REGARDING PERMITTING
 16 “§ 560. Coordination of agency administrative oper-
 17 ations for efficient decisionmaking

18 “(a) CONGRESSIONAL DECLARATION OF PURPOSE.—
 19 The purpose of this subchapter is to establish a framework
 20 and procedures to streamline, increase the efficiency of,
 21 and enhance coordination of agency administration of the
 22 regulatory review, environmental decisionmaking, and per-
 23 mitting process for projects undertaken, reviewed, or fund-
 24 ed by Federal agencies. This subchapter will ensure that
 25 agencies administer the regulatory process in a manner

1 that is efficient so that citizens are not burdened with reg-
2 ulatory excuses and time delays.

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

5 “(1) ‘agency’ means any agency, department, or
6 other unit of Federal, State, local, or Indian tribal
7 government;

8 “(2) ‘category of projects’ means 2 or more
9 projects related by project type, potential environ-
10 mental impacts, geographic location, or another
11 similar project feature or characteristic;

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

15 “(A) briefly provide sufficient evidence and
16 analysis for determining whether to prepare an
17 environmental impact statement or a finding of
18 no significant impact;

19 “(B) aid an agency’s compliance with
20 NEPA when no environmental impact state-
21 ment is necessary; and

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

1 “(4) ‘environmental impact statement’ means
2 the detailed statement of significant environmental
3 impacts required to be prepared under NEPA;

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

8 “(6) ‘environmental decisionmaking process’
9 means the Federal agency procedures for under-
10 taking and completion of any environmental permit,
11 decision, approval, review, or study under any Fed-
12 eral law other than NEPA for a project subject to
13 an environmental review;

14 “(7) ‘environmental document’ means an envi-
15 ronmental assessment or environmental impact
16 statement, and includes any supplemental document
17 or document prepared pursuant to a court order;

18 “(8) ‘finding of no significant impact’ means a
19 document by a Federal agency briefly presenting the
20 reasons why a project, not otherwise subject to a
21 categorical exclusion, will not have a significant ef-
22 fect on the human environment and for which an en-
23 vironmental impact statement therefore will not be
24 prepared;

1 “(9) ‘lead agency’ means the Federal agency
2 preparing or responsible for preparing the environ-
3 mental document;

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

6 “(11) ‘project’ means major Federal actions
7 that are construction activities undertaken with Fed-
8 eral funds or that are construction activities that re-
9 quire approval by a permit or regulatory decision
10 issued by a Federal agency;

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

15 “(13) ‘record of decision’ means a document
16 prepared by a lead agency under NEPA following an
17 environmental impact statement that states the lead
18 agency’s decision, identifies the alternatives consid-
19 ered by the agency in reaching its decision and
20 states whether all practicable means to avoid or min-
21 imize environmental harm from the alternative se-
22 lected have been adopted, and if not, why they were
23 not adopted.

24 “(c) PREPARATION OF ENVIRONMENTAL DOCU-
25 MENTS.—Upon the request of the lead agency, the project

1 sponsor shall be authorized to prepare any document for
2 purposes of an environmental review required in support
3 of any project or approval by the lead agency if the lead
4 agency furnishes oversight in such preparation and inde-
5 pendently evaluates such document and the document is
6 approved and adopted by the lead agency prior to taking
7 any action or making any approval based on such docu-
8 ment.

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

10 “(1) DOCUMENTS PREPARED UNDER NEPA.—

11 “(A) Not more than 1 environmental im-
12 pact statement and 1 environmental assessment
13 shall be prepared under NEPA for a project
14 (except for supplemental environmental docu-
15 ments prepared under NEPA or environmental
16 documents prepared pursuant to a court order),
17 and, except as otherwise provided by law, the
18 lead agency shall prepare the environmental im-
19 pact statement or environmental assessment.
20 After the lead agency issues a record of deci-
21 sion, no Federal agency responsible for making
22 any approval for that project may rely on a docu-
23 ment other than the environmental document
24 prepared by the lead agency.

1 “(B) Upon the request of a project spon-
2 sor, a lead agency may adopt, use, or rely upon
3 secondary and cumulative impact analyses in-
4 cluded in any environmental document prepared
5 under NEPA for projects in the same geo-
6 graphic area where the secondary and cumu-
7 lative impact analyses provide information and
8 data that pertains to the NEPA decision for the
9 project under review.

10 “(2) STATE ENVIRONMENTAL DOCUMENTS;
11 SUPPLEMENTAL DOCUMENTS.—

12 “(A) Upon the request of a project spon-
13 sor, a lead agency may adopt a document that
14 has been prepared for a project under State
15 laws and procedures as the environmental im-
16 pact statement or environmental assessment for
17 the project, provided that the State laws and
18 procedures under which the document was pre-
19 pared provide environmental protection and op-
20 portunities for public involvement that are sub-
21 stantially equivalent to NEPA.

22 “(B) An environmental document adopted
23 under subparagraph (A) is deemed to satisfy
24 the lead agency’s obligation under NEPA to

1 prepare an environmental impact statement or
2 environmental assessment.

3 “(C) In the case of a document described
4 in subparagraph (A), during the period after
5 preparation of the document but before its
6 adoption by the lead agency, the lead agency
7 shall prepare and publish a supplement to that
8 document if the lead agency determines that—

9 “(i) a significant change has been
10 made to the project that is relevant for
11 purposes of environmental review of the
12 project; or

13 “(ii) there have been significant
14 changes in circumstances or availability of
15 information relevant to the environmental
16 review for the project.

17 “(D) If the agency prepares and publishes
18 a supplemental document under subparagraph
19 (C), the lead agency may solicit comments from
20 agencies and the public on the supplemental
21 document for a period of not more than 45
22 days beginning on the date of the publication of
23 the supplement.

24 “(E) A lead agency shall issue its record of
25 decision or finding of no significant impact, as

1 appropriate, based upon the document adopted
2 under subparagraph (A), and any supplements
3 thereto.

4 “(3) CONTEMPORANEOUS PROJECTS.—If the
5 lead agency determines that there is a reasonable
6 likelihood that the project will have similar environ-
7 mental impacts as a similar project in geographical
8 proximity to the project, and that similar project
9 was subject to environmental review or similar State
10 procedures within the 5 year period immediately pre-
11 ceding the date that the lead agency makes that de-
12 termination, the lead agency may adopt the environ-
13 mental document that resulted from that environ-
14 mental review or similar State procedure. The lead
15 agency may adopt such an environmental document,
16 if it is prepared under State laws and procedures
17 only upon making a favorable determination on such
18 environmental document pursuant to paragraph
19 (2)(A).

20 “(e) PARTICIPATING AGENCIES.—

21 “(1) IN GENERAL.—The lead agency shall be
22 responsible for inviting and designating participating
23 agencies in accordance with this subsection. The
24 lead agency shall provide the invitation or notice of
25 the designation in writing.

1 “(2) FEDERAL PARTICIPATING AGENCIES.—Any
2 Federal agency that is required to adopt the envi-
3 ronmental document of the lead agency for a project
4 shall be designated as a participating agency and
5 shall collaborate on the preparation of the environ-
6 mental document, unless the Federal agency informs
7 the lead agency, in writing, by a time specified by
8 the lead agency in the designation of the Federal
9 agency that the Federal agency—

10 “(A) has no jurisdiction or authority with
11 respect to the project;

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

14 “(C) does not intend to submit comments
15 on the project.

16 “(3) INVITATION.—The lead agency shall iden-
17 tify, as early as practicable in the environmental re-
18 view for a project, any agencies other than an agen-
19 cy described in paragraph (2) that may have an in-
20 terest in the project, including, where appropriate,
21 Governors of affected States, and heads of appro-
22 priate tribal and local (including county) govern-
23 ments, and shall invite such identified agencies and
24 officials to become participating agencies in the envi-
25 ronmental review for the project. The invitation shall

1 set a deadline of 30 days for responses to be sub-
2 mitted, which may only be extended by the lead
3 agency for good cause shown. Any agency that fails
4 to respond prior to the deadline shall be deemed to
5 have declined the invitation.

6 “(4) EFFECT OF DECLINING PARTICIPATING
7 AGENCY INVITATION.—Any agency that declines a
8 designation or invitation by the lead agency to be a
9 participating agency shall be precluded from submit-
10 ting comments on any document prepared under
11 NEPA for that project or taking any measures to
12 oppose, based on the environmental review, any per-
13 mit, license, or approval related to that project.

14 “(5) EFFECT OF DESIGNATION.—Designation
15 as a participating agency under this subsection does
16 not imply that the participating agency—

17 “(A) supports a proposed project; or

18 “(B) has any jurisdiction over, or special
19 expertise with respect to evaluation of, the
20 project.

21 “(6) COOPERATING AGENCY.—A participating
22 agency may also be designated by a lead agency as
23 a ‘cooperating agency’ under the regulations con-
24 tained in part 1500 of title 40, Code of Federal Reg-
25 ulations, as in effect on January 1, 2011. Designa-

1 tion as a cooperating agency shall have no effect on
2 designation as participating agency. No agency that
3 is not a participating agency may be designated as
4 a cooperating agency.

5 “(7) CONCURRENT REVIEWS.—Each Federal
6 agency shall—

7 “(A) carry out obligations of the Federal
8 agency under other applicable law concurrently
9 and in conjunction with the review required
10 under NEPA; and

11 “(B) in accordance with the rules made by
12 the Council on Environmental Quality pursuant
13 to subsection (n)(1), make and carry out such
14 rules, policies, and procedures as may be rea-
15 sonably necessary to enable the agency to en-
16 sure completion of the environmental review
17 and environmental decisionmaking process in a
18 timely, coordinated, and environmentally re-
19 sponsible manner.

20 “(8) COMMENTS.—Each participating agency
21 shall limit its comments on a project to areas that
22 are within the authority and expertise of such par-
23 ticipating agency. Each participating agency shall
24 identify in such comments the statutory authority of
25 the participating agency pertaining to the subject

1 matter of its comments. The lead agency shall not
2 act upon, respond to or include in any document
3 prepared under NEPA, any comment submitted by
4 a participating agency that concerns matters that
5 are outside of the authority and expertise of the
6 commenting participating agency.

7 “(f) PROJECT INITIATION REQUEST.—

8 “(1) NOTICE.—A project sponsor shall provide
9 the Federal agency responsible for undertaking a
10 project with notice of the initiation of the project by
11 providing a description of the proposed project, the
12 general location of the proposed project, and a state-
13 ment of any Federal approvals anticipated to be nec-
14 essary for the proposed project, for the purpose of
15 informing the Federal agency that the environmental
16 review should be initiated.

17 “(2) LEAD AGENCY INITIATION.—The agency
18 receiving a project initiation notice under paragraph
19 (1) shall promptly identify the lead agency for the
20 project, and the lead agency shall initiate the envi-
21 ronmental review within a period of 45 days after
22 receiving the notice required by paragraph (1) by in-
23 viting or designating agencies to become partici-
24 pating agencies, or, where the lead agency deter-
25 mines that no participating agencies are required for

1 the project, by taking such other actions that are
2 reasonable and necessary to initiate the environ-
3 mental review.

4 “(g) ALTERNATIVES ANALYSIS.—

5 “(1) PARTICIPATION.—As early as practicable
6 during the environmental review, but no later than
7 during scoping for a project requiring the prepara-
8 tion of an environmental impact statement, the lead
9 agency shall provide an opportunity for involvement
10 by cooperating agencies in determining the range of
11 alternatives to be considered for a project.

12 “(2) RANGE OF ALTERNATIVES.—Following
13 participation under paragraph (1), the lead agency
14 shall determine the range of alternatives for consid-
15 eration in any document which the lead agency is re-
16 sponsible for preparing for the project, subject to the
17 following limitations:

18 “(A) NO EVALUATION OF CERTAIN ALTER-
19 NATIVES.—No Federal agency shall evaluate
20 any alternative that was identified but not car-
21 ried forward for detailed evaluation in an envi-
22 ronmental document or evaluated and not se-
23 lected in any environmental document prepared
24 under NEPA for the same project.

1 “(B) ONLY FEASIBLE ALTERNATIVES
2 EVALUATED.—Where a project is being con-
3 structed, managed, funded, or undertaken by a
4 project sponsor that is not a Federal agency,
5 Federal agencies shall only be required to evalu-
6 ate alternatives that the project sponsor could
7 feasibly undertake, consistent with the purpose
8 of and the need for the project, including alter-
9 natives that can be undertaken by the project
10 sponsor and that are technically and economi-
11 cally feasible.

12 “(3) METHODOLOGIES.—

13 “(A) IN GENERAL.—The lead agency shall
14 determine, in collaboration with cooperating
15 agencies at appropriate times during the envi-
16 ronmental review, the methodologies to be used
17 and the level of detail required in the analysis
18 of each alternative for a project. The lead agen-
19 cy shall include in the environmental document
20 a description of the methodologies used and
21 how the methodologies were selected.

22 “(B) NO EVALUATION OF INAPPROPRIATE
23 ALTERNATIVES.—When a lead agency deter-
24 mines that an alternative does not meet the
25 purpose and need for a project, that alternative

1 is not required to be evaluated in detail in an
2 environmental document.

3 “(4) PREFERRED ALTERNATIVE.—At the dis-
4 cretion of the lead agency, the preferred alternative
5 for a project, after being identified, may be devel-
6 oped to a higher level of detail than other alter-
7 natives in order to facilitate the development of miti-
8 gation measures or concurrent compliance with other
9 applicable laws if the lead agency determines that
10 the development of such higher level of detail will
11 not prevent the lead agency from making an impar-
12 tial decision as to whether to accept another alter-
13 native which is being considered in the environ-
14 mental review.

15 “(5) EMPLOYMENT ANALYSIS.—The evaluation
16 of each alternative in an environmental impact state-
17 ment or an environmental assessment shall identify
18 the potential effects of the alternative on employ-
19 ment, including potential short-term and long-term
20 employment increases and reductions and shifts in
21 employment.

22 “(h) COORDINATION AND SCHEDULING.—

23 “(1) COORDINATION PLAN.—

24 “(A) IN GENERAL.—The lead agency shall
25 establish and implement a plan for coordinating

1 public and agency participation in and comment
2 on the environmental review for a project or
3 category of projects to facilitate the expeditious
4 resolution of the environmental review.

5 “(B) SCHEDULE.—

6 “(i) IN GENERAL.—The lead agency
7 shall establish as part of the coordination
8 plan for a project, after consultation with
9 each participating agency and, where appli-
10 cable, the project sponsor, a schedule for
11 completion of the environmental review.
12 The schedule shall include deadlines, con-
13 sistent with subsection (i), for decisions
14 under any other Federal laws (including
15 the issuance or denial of a permit or li-
16 cense) relating to the project that is cov-
17 ered by the schedule.

18 “(ii) FACTORS FOR CONSIDER-
19 ATION.—In establishing the schedule, the
20 lead agency shall consider factors such
21 as—

22 “(I) the responsibilities of par-
23 ticipating agencies under applicable
24 laws;

1 “(II) resources available to the
2 participating agencies;

3 “(III) overall size and complexity
4 of the project;

5 “(IV) overall schedule for and
6 cost of the project;

7 “(V) the sensitivity of the natural
8 and historic resources that could be
9 affected by the project; and

10 “(VI) the extent to which similar
11 projects in geographic proximity were
12 recently subject to environmental re-
13 view or similar State procedures.

14 “(iii) COMPLIANCE WITH THE SCHED-
15 ULE.—

16 “(I) All participating agencies
17 shall comply with the time periods es-
18 tablished in the schedule or with any
19 modified time periods, where the lead
20 agency modifies the schedule pursuant
21 to subparagraph (D).

22 “(II) The lead agency shall dis-
23 regard and shall not respond to or in-
24 clude in any document prepared under
25 NEPA, any comment or information

1 submitted or any finding made by a
2 participating agency that is outside of
3 the time period established in the
4 schedule or modification pursuant to
5 subparagraph (D) for that agency's
6 comment, submission or finding.

7 “(III) If a participating agency
8 fails to object in writing to a lead
9 agency decision, finding or request for
10 concurrence within the time period es-
11 tablished under law or by the lead
12 agency, the agency shall be deemed to
13 have concurred in the decision, finding
14 or request.

15 “(C) CONSISTENCY WITH OTHER TIME PE-
16 RIODS.—A schedule under subparagraph (B)
17 shall be consistent with any other relevant time
18 periods established under Federal law.

19 “(D) MODIFICATION.—The lead agency
20 may—

21 “(i) lengthen a schedule established
22 under subparagraph (B) for good cause;
23 and

24 “(ii) shorten a schedule only with the
25 concurrence of the cooperating agencies.

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

4 “(i) provided within 15 days of com-
5 pletion or modification of such schedule to
6 all participating agencies and to the
7 project sponsor; and

8 “(ii) made available to the public.

9 “(F) ROLES AND RESPONSIBILITY OF
10 LEAD AGENCY.—With respect to the environ-
11 mental review for any project, the lead agency
12 shall have authority and responsibility to take
13 such actions as are necessary and proper, with-
14 in the authority of the lead agency, to facilitate
15 the expeditious resolution of the environmental
16 review for the project.

17 “(i) DEADLINES.—The following deadlines shall
18 apply to any project subject to review under NEPA and
19 any decision under any Federal law relating to such
20 project (including the issuance or denial of a permit or
21 license or any required finding):

22 “(1) ENVIRONMENTAL REVIEW DEADLINES.—
23 The lead agency shall complete the environmental
24 review within the following deadlines:

1 “(A) ENVIRONMENTAL IMPACT STATE-
2 MENT PROJECTS.—For projects requiring prep-
3 aration of an environmental impact statement—

4 “(i) the lead agency shall issue an en-
5 vironmental impact statement within 2
6 years after the earlier of the date the lead
7 agency receives the project initiation re-
8 quest or a Notice of Intent to Prepare an
9 Environmental Impact Statement is pub-
10 lished in the Federal Register; and

11 “(ii) in circumstances where the lead
12 agency has prepared an environmental as-
13 sessment and determined that an environ-
14 mental impact statement will be required,
15 the lead agency shall issue the environ-
16 mental impact statement within 2 years
17 after the date of publication of the Notice
18 of Intent to Prepare an Environmental Im-
19 pact Statement in the Federal Register.

20 “(B) ENVIRONMENTAL ASSESSMENT
21 PROJECTS.—For projects requiring preparation
22 of an environmental assessment, the lead agen-
23 cy shall issue a finding of no significant impact
24 or publish a Notice of Intent to Prepare an En-
25 vironmental Impact Statement in the Federal

1 Register within 1 year after the earlier of the
2 date the lead agency receives the project initi-
3 ation request, makes a decision to prepare an
4 environmental assessment, or sends out partici-
5 pating agency invitations.

6 “(2) EXTENSIONS.—

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

9 “(i) a different deadline is established
10 by agreement of the lead agency, the
11 project sponsor, and all participating agen-
12 cies; or

13 “(ii) the deadline is extended by the
14 lead agency for good cause.

15 “(B) LIMITATION.—The environmental re-
16 view shall not be extended by more than 1 year
17 for a project requiring preparation of an envi-
18 ronmental impact statement or by more than
19 180 days for a project requiring preparation of
20 an environmental assessment.

21 “(3) ENVIRONMENTAL REVIEW COMMENTS.—

22 “(A) COMMENTS ON DRAFT ENVIRON-
23 MENTAL IMPACT STATEMENT.—For comments
24 by agencies and the public on a draft environ-
25 mental impact statement, the lead agency shall

1 establish a comment period of not more than 60
2 days after publication in the Federal Register
3 of notice of the date of public availability of
4 such document, unless—

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

9 “(ii) the deadline is extended by the
10 lead agency for good cause.

11 “(B) OTHER COMMENTS.—For all other
12 comment periods for agency or public comments
13 in the environmental review process, the lead
14 agency shall establish a comment period of no
15 more than 30 days from availability of the ma-
16 terials on which comment is requested, unless—

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

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

23 “(4) DEADLINES FOR DECISIONS UNDER
24 OTHER LAWS.—Notwithstanding any other provision
25 of law, in any case in which a decision under any

1 other Federal law relating to the undertaking of a
2 project being reviewed under NEPA (including the
3 issuance or denial of a permit or license) is required
4 to be made, the following deadlines shall apply:

5 “(A) DECISIONS PRIOR TO RECORD OF DE-
6 CISION OR FINDING OF NO SIGNIFICANT IM-
7 PACT.—If a Federal agency is required to ap-
8 prove, or otherwise to act upon, a permit, li-
9 cense, or other similar application for approval
10 related to a project prior to the record of deci-
11 sion or finding of no significant impact, such
12 Federal agency shall approve or otherwise act
13 not later than the end of a 90 day period begin-
14 ning—

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

17 “(ii) after the lead agency publishes a
18 notice of the availability of the final envi-
19 ronmental impact statement or issuance of
20 other final environmental documents, or no
21 later than such other date that is otherwise
22 required by law, whichever event occurs
23 first.

24 “(B) OTHER DECISIONS.—With regard to
25 any approval or other action related to a project

1 by a Federal agency that is not subject to sub-
2 paragraph (A), each Federal agency shall ap-
3 prove or otherwise act not later than the end of
4 a period of 180 days beginning—

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

7 “(ii) after the lead agency issues the
8 record of decision or finding of no signifi-
9 cant impact, unless a different deadline is
10 established by agreement of the Federal
11 agency, lead agency, and the project spon-
12 sor, where applicable, or the deadline is ex-
13 tended by the Federal agency for good
14 cause, provided that such extension shall
15 not extend beyond a period that is 1 year
16 after the lead agency issues the record of
17 decision or finding of no significant im-
18 pact.

19 “(C) FAILURE TO ACT.—In the event that
20 any Federal agency fails to approve, or other-
21 wise to act upon, a permit, license, or other
22 similar application for approval related to a
23 project within the applicable deadline described
24 in subparagraph (A) or (B), the permit, license,
25 or other similar application shall be deemed ap-

1 proved by such agency and the agency shall
2 take action in accordance with such approval
3 within 30 days of the applicable deadline de-
4 scribed in subparagraph (A) or (B).

5 “(D) FINAL AGENCY ACTION.—Any ap-
6 proval under subparagraph (C) is deemed to be
7 final agency action, and may not be reversed by
8 any agency. In any action under chapter 7 seek-
9 ing review of such a final agency action, the
10 court may not set aside such agency action by
11 reason of that agency action having occurred
12 under this paragraph.

13 “(j) ISSUE IDENTIFICATION AND RESOLUTION.—

14 “(1) COOPERATION.—The lead agency and the
15 participating agencies shall work cooperatively in ac-
16 cordance with this section to identify and resolve
17 issues that could delay completion of the environ-
18 mental review or could result in denial of any ap-
19 provals required for the project under applicable
20 laws.

21 “(2) LEAD AGENCY RESPONSIBILITIES.—The
22 lead agency shall make information available to the
23 participating agencies as early as practicable in the
24 environmental review regarding the environmental,
25 historic, and socioeconomic resources located within

1 the project area and the general locations of the al-
2 ternatives under consideration. Such information
3 may be based on existing data sources, including ge-
4 ographic information systems mapping.

5 “(3) PARTICIPATING AGENCY RESPONSIBIL-
6 ITIES.—Based on information received from the lead
7 agency, participating agencies shall identify, as early
8 as practicable, any issues of concern regarding the
9 project’s potential environmental, historic, or socio-
10 economic impacts. In this paragraph, issues of con-
11 cern include any issues that could substantially delay
12 or prevent an agency from granting a permit or
13 other approval that is needed for the project.

14 “(4) ISSUE RESOLUTION.—

15 “(A) MEETING OF PARTICIPATING AGEN-
16 CIES.—At any time upon request of a project
17 sponsor, the lead agency shall promptly convene
18 a meeting with the relevant participating agen-
19 cies and the project sponsor, to resolve issues
20 that could delay completion of the environ-
21 mental review or could result in denial of any
22 approvals required for the project under appli-
23 cable laws.

24 “(B) NOTICE THAT RESOLUTION CANNOT
25 BE ACHIEVED.—If a resolution cannot be

1 achieved within 30 days following such a meet-
2 ing and a determination by the lead agency that
3 all information necessary to resolve the issue
4 has been obtained, the lead agency shall notify
5 the heads of all participating agencies, the
6 project sponsor, and the Council on Environ-
7 mental Quality for further proceedings in ac-
8 cordance with section 204 of NEPA, and shall
9 publish such notification in the Federal Reg-
10 ister.

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

13 “(1) the projects for which the agency initiated
14 preparation of an environmental impact statement or
15 environmental assessment;

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

20 “(3) the filing of any lawsuits against the agen-
21 cy seeking judicial review of a permit, license, or ap-
22 proval issued by the agency for an action subject to
23 NEPA, including the date the complaint was filed,
24 the court in which the complaint was filed, and a

1 summary of the claims for which judicial review was
2 sought; and

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

7 “(1) LIMITATIONS ON CLAIMS.—

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

13 “(A) in the case of a claim pertaining to
14 a project for which an environmental review
15 was conducted and an opportunity for comment
16 was provided, the claim is filed by a party that
17 submitted a comment during the environmental
18 review on the issue on which the party seeks ju-
19 dicial review, and such comment was suffi-
20 ciently detailed to put the lead agency on notice
21 of the issue upon which the party seeks judicial
22 review; and

23 “(B) filed within 180 days after publica-
24 tion of a notice in the Federal Register an-
25 nouncing that the permit, license, or approval is

1 final pursuant to the law under which the agen-
2 cy action is taken, unless a shorter time is spec-
3 ified in the Federal law pursuant to which judi-
4 cial review is allowed.

5 “(2) NEW INFORMATION.—The preparation of
6 a supplemental environmental impact statement,
7 when required, is deemed a separate final agency ac-
8 tion and the deadline for filing a claim for judicial
9 review of such action shall be 180 days after the
10 date of publication of a notice in the Federal Reg-
11 ister announcing the record of decision for such ac-
12 tion. Any claim challenging agency action on the
13 basis of information in a supplemental environ-
14 mental impact statement shall be limited to chal-
15 lenges on the basis of that information.

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

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

24 “(n) EFFECTIVE DATE.—The requirements of this
25 subchapter shall apply only to environmental reviews and

1 environmental decisionmaking processes initiated after the
 2 date of enactment of this subchapter.

3 “(o) APPLICABILITY.—Except as provided in sub-
 4 section (p), this subchapter applies, according to the provi-
 5 sions thereof, to all projects for which a Federal agency
 6 is required to undertake an environmental review or make
 7 a decision under an environmental law for a project for
 8 which a Federal agency is undertaking an environmental
 9 review.

10 “(p) SAVINGS CLAUSE.—Nothing in this section shall
 11 be construed to supersede, amend, or modify sections 134,
 12 135, 139, 325, 326, and 327 of title 23, United States
 13 Code, sections 5303 and 5304 of title 49, United States
 14 Code, or subtitle C of title I of division A of the Moving
 15 Ahead for Progress in the 21st Century Act and the
 16 amendments made by such subtitle (Public Law 112–
 17 141).”.

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

“SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING
 PERMITTING

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

22 (c) REGULATIONS.—

1 (1) COUNCIL ON ENVIRONMENTAL QUALITY.—

2 Not later than 180 days after the date of enactment
3 of this title, the Council on Environmental Quality
4 shall amend the regulations contained in part 1500
5 of title 40, Code of Federal Regulations, to imple-
6 ment the provisions of this title and the amendments
7 made by this title, and shall by rule designate States
8 with laws and procedures that satisfy the criteria
9 under section 560(d)(2)(A) of title 5, United States
10 Code.

11 (2) FEDERAL AGENCIES.—Not later than 120
12 days after the date that the Council on Environ-
13 mental Quality amends the regulations contained in
14 part 1500 of title 40, Code of Federal Regulations,
15 to implement the provisions of this title and the
16 amendments made by this title, each Federal agency
17 with regulations implementing the National Environ-
18 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
19 shall amend such regulations to implement the pro-
20 visions of this subchapter.

1 **TITLE VI—SECURITIES AND EX-**
2 **CHANGE COMMISSION REGU-**
3 **LATORY ACCOUNTABILITY**

4 **SEC. 601. SHORT TITLE.**

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

7 **SEC. 602. CONSIDERATION BY THE SECURITIES AND EX-**
8 **CHANGE COMMISSION OF THE COSTS AND**
9 **BENEFITS OF ITS REGULATIONS AND CER-**
10 **TAIN OTHER AGENCY ACTIONS.**

11 Section 23 of the Securities Exchange Act of 1934
12 (15 U.S.C. 78w) is amended by adding at the end the fol-
13 lowing:

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

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

18 “(A) clearly identify the nature and source
19 of the problem that the proposed regulation is
20 designed to address, as well as assess the sig-
21 nificance of that problem, to enable assessment
22 of whether any new regulation is warranted;

23 “(B) utilize the Chief Economist to assess
24 the costs and benefits, both qualitative and
25 quantitative, of the intended regulation and

1 propose or adopt a regulation only on a rea-
2 soned determination that the benefits of the in-
3 tended regulation justify the costs of the regula-
4 tion;

5 “(C) identify and assess available alter-
6 natives to the regulation that were considered,
7 including modification of an existing regulation,
8 together with an explanation of why the regula-
9 tion meets the regulatory objectives more effec-
10 tively than the alternatives; and

11 “(D) ensure that any regulation is acces-
12 sible, consistent, written in plain language, and
13 easy to understand and shall measure, and seek
14 to improve, the actual results of regulatory re-
15 quirements.

16 “(2) CONSIDERATIONS AND ACTIONS.—

17 “(A) REQUIRED ACTIONS.—In deciding
18 whether and how to regulate, the Commission
19 shall assess the costs and benefits of available
20 regulatory alternatives, including the alternative
21 of not regulating, and choose the approach that
22 maximizes net benefits. Specifically, the Com-
23 mission shall—

24 “(i) consistent with the requirements
25 of section 3(f) (15 U.S.C. 78c(f)), section

1 2(b) of the Securities Act of 1933 (15
2 U.S.C. 77b(b)), section 202(c) of the In-
3 vestment Advisers Act of 1940 (15 U.S.C.
4 80b-2(c)), and section 2(c) of the Invest-
5 ment Company Act of 1940 (15 U.S.C.
6 80a-2(c)), consider whether the rule-
7 making will promote efficiency, competi-
8 tion, and capital formation;

9 “(ii) evaluate whether, consistent with
10 obtaining regulatory objectives, the regula-
11 tion is tailored to impose the least burden
12 on society, including market participants,
13 individuals, businesses of differing sizes,
14 and other entities (including State and
15 local governmental entities), taking into ac-
16 count, to the extent practicable, the cumu-
17 lative costs of regulations; and

18 “(iii) evaluate whether the regulation
19 is inconsistent, incompatible, or duplicative
20 of other Federal regulations.

21 “(B) ADDITIONAL CONSIDERATIONS.—In
22 addition, in making a reasoned determination of
23 the costs and benefits of a potential regulation,
24 the Commission shall, to the extent that each is
25 relevant to the particular proposed regulation,

1 take into consideration the impact of the regu-
2 lation on—

3 “(i) investor choice;

4 “(ii) market liquidity in the securities
5 markets; and

6 “(iii) small businesses

7 “(3) EXPLANATION AND COMMENTS.—The
8 Commission shall explain in its final rule the nature
9 of comments that it received, including those from
10 the industry or consumer groups concerning the po-
11 tential costs or benefits of the proposed rule or pro-
12 posed rule change, and shall provide a response to
13 those comments in its final rule, including an expla-
14 nation of any changes that were made in response
15 to those comments and the reasons that the Com-
16 mission did not incorporate those industry group
17 concerns related to the potential costs or benefits in
18 the final rule.

19 “(4) REVIEW OF EXISTING REGULATIONS.—Not
20 later than 1 year after the date of enactment of the
21 SEC Regulatory Accountability Act, and every 5
22 years thereafter, the Commission shall review its
23 regulations to determine whether any such regula-
24 tions are outmoded, ineffective, insufficient, or ex-
25 cessively burdensome, and shall modify, streamline,

1 expand, or repeal them in accordance with such re-
2 view. In reviewing any regulation (including, not-
3 withstanding paragraph (6), a regulation issued in
4 accordance with formal rulemaking provisions) that
5 subjects issuers with a public float of \$250,000,000
6 or less to the attestation and reporting requirements
7 of section 404(b) of the Sarbanes-Oxley Act of 2002
8 (15 U.S.C. 7262(b)), the Commission shall specifi-
9 cally take into account the large burden of such regu-
10 lation when compared to the benefit of such regula-
11 tion.

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

13 “(A) IN GENERAL.—Whenever the Com-
14 mission adopts or amends a regulation des-
15 ignated as a ‘major rule’ within the meaning of
16 section 804(2) of title 5, United States Code, it
17 shall state, in its adopting release, the fol-
18 lowing:

19 “(i) The purposes and intended con-
20 sequences of the regulation.

21 “(ii) Appropriate post-implementation
22 quantitative and qualitative metrics to
23 measure the economic impact of the regu-
24 lation and to measure the extent to which

1 the regulation has accomplished the stated
2 purposes.

3 “(iii) The assessment plan that will be
4 used, consistent with the requirements of
5 subparagraph (B) and under the super-
6 vision of the Chief Economist of the Com-
7 mission, to assess whether the regulation
8 has achieved the stated purposes.

9 “(iv) Any unintended or negative con-
10 sequences that the Commission foresees
11 may result from the regulation.

12 “(B) REQUIREMENTS OF ASSESSMENT
13 PLAN AND REPORT.—

14 “(i) REQUIREMENTS OF PLAN.—The
15 assessment plan required under this para-
16 graph shall consider the costs, benefits,
17 and intended and unintended consequences
18 of the regulation. The plan shall specify
19 the data to be collected, the methods for
20 collection and analysis of the data and a
21 date for completion of the assessment.

22 “(ii) SUBMISSION AND PUBLICATION
23 OF REPORT.—The Chief Economist shall
24 submit the completed assessment report to
25 the Commission no later than 2 years after

1 the publication of the adopting release, un-
2 less the Commission, at the request of the
3 Chief Economist, has published at least 90
4 days before such date a notice in the Fed-
5 eral Register extending the date and pro-
6 viding specific reasons why an extension is
7 necessary. Within 7 days after submission
8 to the Commission of the final assessment
9 report, it shall be published in the Federal
10 Register for notice and comment. Any ma-
11 terial modification of the plan, as nec-
12 essary to assess unforeseen aspects or con-
13 sequences of the regulation, shall be
14 promptly published in the Federal Register
15 for notice and comment.

16 “(iii) DATA COLLECTION NOT SUB-
17 JECT TO NOTICE AND COMMENT REQUIRE-
18 MENTS.—If the Commission has published
19 its assessment plan for notice and com-
20 ment, specifying the data to be collected
21 and method of collection, at least 30 days
22 prior to adoption of a final regulation or
23 amendment, such collection of data shall
24 not be subject to the notice and comment
25 requirements in section 3506(c) of title 44,

1 United States Code (commonly referred to
2 as the Paperwork Reduction Act). Any ma-
3 terial modifications of the plan that require
4 collection of data not previously published
5 for notice and comment shall also be ex-
6 empt from such requirements if the Com-
7 mission has published notice for comment
8 in the Federal Register of the additional
9 data to be collected, at least 30 days prior
10 to initiation of data collection.

11 “(iv) FINAL ACTION.—Not later than
12 180 days after publication of the assess-
13 ment report in the Federal Register, the
14 Commission shall issue for notice and com-
15 ment a proposal to amend or rescind the
16 regulation, or publish a notice that the
17 Commission has determined that no action
18 will be taken on the regulation. Such a no-
19 tice will be deemed a final agency action.

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

23 “(A) means an agency statement of gen-
24 eral applicability and future effect that is de-
25 signed to implement, interpret, or prescribe law

1 or policy or to describe the procedure or prac-
2 tice requirements of an agency, including rules,
3 orders of general applicability, interpretive re-
4 leases, and other statements of general applica-
5 bility that the agency intends to have the force
6 and effect of law; and

7 “(B) does not include—

8 “(i) a regulation issued in accordance
9 with the formal rulemaking provisions of
10 section 556 or 557 of title 5, United States
11 Code;

12 “(ii) a regulation that is limited to
13 agency organization, management, or per-
14 sonnel matters;

15 “(iii) a regulation promulgated pursu-
16 ant to statutory authority that expressly
17 prohibits compliance with this provision;
18 and

19 “(iv) a regulation that is certified by
20 the agency to be an emergency action, if
21 such certification is published in the Fed-
22 eral Register.”.

1 **SEC. 603. SENSE OF CONGRESS RELATING TO OTHER REGU-**
2 **LATORY ENTITIES.**

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

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

11 Notwithstanding any other provision of law, no inter-
12 pretive guidance issued by the Securities and Exchange
13 Commission on or after the effective date of this Act relat-
14 ing to “Commission Guidance Regarding Disclosure Re-
15 lated to Climate Change”, affecting parts 211, 231, and
16 249 of title 17, Code of Federal Regulations (as described
17 in Commission Release Nos. 33–9106; 34–61469; FR–
18 82), or any successor thereto, may take effect, and such
19 guidance shall have no force or effect with respect to any
20 person on or after February 2, 2010.

21 **SEC. 605. OTHER SEC ACTION PROHIBITED.**

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

1 (b) VOLUNTARY SUBMISSIONS.—The Commission
2 may not issue any interpretive guidance that would estab-
3 lish any requirements with respect to the content of or
4 format for any disclosures related to climate change volun-
5 tarily submitted by any entity to the Commission on or
6 after the effective date of this Act.

7 (c) CIVIL AND ADMINISTRATIVE ACTIONS.—No civil
8 or administrative action or proceeding pertaining to disclo-
9 sures related to climate change may be initiated by the
10 Commission on or after the date of the enactment of this
11 Act and any such actions or proceedings pending on such
12 date shall be terminated.

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

15 (1) prohibit the Commission from issuing inter-
16 pretive guidance with respect to disclosures related
17 to non-anthropogenic or natural climate variability
18 observed over comparable time periods; or

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

1 **TITLE VII—CONSIDERATION BY**
2 **COMMODITY FUTURES TRAD-**
3 **ING COMMISSION OF CER-**
4 **TAIN COSTS AND BENEFITS**

5 **SEC. 701. CONSIDERATION BY THE COMMODITY FUTURES**
6 **TRADING COMMISSION OF THE COSTS AND**
7 **BENEFITS OF ITS REGULATIONS AND OR-**
8 **DERS.**

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

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

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

4 “(A) considerations of protection of market
5 participants and the public;

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

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

11 “(D) considerations of price discovery;

12 “(E) considerations of sound risk manage-
13 ment practices;

14 “(F) available alternatives to direct regula-
15 tion;

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

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

1 taking into account, to the extent practicable,
2 the cumulative costs of regulations;

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

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

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

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

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

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

22 (b) CONTENT OF GUIDELINES.—The guidelines de-
23 scribed in subsection (a), with respect to a Federal agency,
24 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 disclo-
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:

KAREN L. HAAS,

Clerk.

Calendar No. 477

112TH CONGRESS
2D Session

H. R. 4078

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.

JULY 31, 2012

Read the second time and placed on the calendar