

112TH CONGRESS
2^D 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.

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

1 SECTION 1. SHORT TITLE.

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

4 SEC. 2. TABLE OF CONTENTS.

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

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

TITLE I—REGULATORY FREEZE FOR JOBS

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

TITLE II—MIDNIGHT RULE RELIEF

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

TITLE III—REGULATORY DECREES AND SETTLEMENTS

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

TITLE IV—UNFUNDED MANDATES INFORMATION AND
TRANSPARENCY

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

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

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

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

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

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

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

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

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

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

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

9 (d) CONGRESSIONAL WAIVERS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SEC. 105. DEFINITIONS.**

4 In this title:

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

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

11 (B) the Federal Open Market Committee;
12 or

13 (C) the United States Postal Service.

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

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

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

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

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

24 (2) which is paid—

25 (A) to a nonresident alien, and

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

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 204. EXCEPTION.**

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

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

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

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

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

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

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

12 **SEC. 205. DEFINITIONS.**

13 In this title:

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

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

20 (B) the Federal Open Market Committee;

21 or

22 (C) the United States Postal Service.

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

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

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

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

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

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

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

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

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

3 **SEC. 301. SHORT TITLE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (6) The defendant agency shall—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 that—

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

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

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

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

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

12 terms that—

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

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 402. PURPOSE.**

14 The purpose of this title is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (2) in subsection (a)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 and

21 (2) by inserting after section 208 the following

22 new section 209:

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

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

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

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

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

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

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

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

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

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

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

10 (1) in paragraphs (1) and (2)(A)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 “(1) DOCUMENTS PREPARED UNDER NEPA.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 “(e) PARTICIPATING AGENCIES.—

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

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

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

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

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

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

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

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

4 “(A) supports a proposed project; or

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

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

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

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

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

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

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

19 “(f) PROJECT INITIATION REQUEST.—

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

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

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

16 “(g) ALTERNATIVES ANALYSIS.—

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

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

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

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

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

23 “(3) METHODOLOGIES.—

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

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

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

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

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

8 “(h) COORDINATION AND SCHEDULING.—

9 “(1) COORDINATION PLAN.—

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

16 “(B) SCHEDULE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “(ii) made available to the public.

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

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

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

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

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

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

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

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

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

16 “(2) EXTENSIONS.—

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

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

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

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

7 “(3) ENVIRONMENTAL REVIEW COMMENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(j) ISSUE IDENTIFICATION AND RESOLUTION.—

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

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

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

1 “(4) ISSUE RESOLUTION.—

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

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

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

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

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

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

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

19 “(1) LIMITATIONS ON CLAIMS.—

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

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

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

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

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

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

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

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

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

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

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

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

“SUBCHAPTER IIA—INTERAGENCY COORDINATION REGARDING
PERMITTING
“560. Coordination of agency administrative operations for efficient decision-
making.”.

10 (c) REGULATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 “(2) CONSIDERATIONS AND ACTIONS.—

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

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

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

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

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

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

13 “(i) investor choice;

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

16 “(iii) small businesses

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 “(B) does not include—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 “(D) considerations of price discovery;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) agency guidance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 “(6) The amount of the award.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 “(F) The amount of the award.

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

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

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

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

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

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

Passed the House of Representatives July 26, 2012.

Attest:

Clerk.

112TH CONGRESS
2^D 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.