

Union Calendar No. 446

112TH CONGRESS
2^D SESSION

H. R. 4078

[Report No. 112-461, Parts I and II]

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 2012

Mr. GRIFFIN of Arkansas (for himself, Mr. SMITH of Texas, Mr. COBLE, Mr. GALLEGLY, Mr. CHABOT, Mr. FRANKS of Arizona, Mr. POE of Texas, Mr. CHAFFETZ, Mr. MARINO, Mr. GOWDY, Mr. ROSS of Florida, Mrs. ADAMS, Mr. QUAYLE, Mr. AMODEI, and Mr. CARTER) introduced the following bill; which was referred to the Committee on Oversight and Government Reform, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

APRIL 27, 2012

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

JULY 20, 2012

Additional sponsors: Mr. GOODLATTE, Mr. FORBES, Mr. SCHWEIKERT, Mr. DUNCAN of South Carolina, Mr. MILLER of Florida, and Mrs. BLACK

JULY 20, 2012

Reported from the Committee on Oversight and Government Reform with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in boldface roman]

[For text of introduced bill, see copy of bill as introduced on February 17, 2012]

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7 *In this Act—*

8 (1) *the terms “agency” and “rule” have the*
9 *meanings given such terms under section 551 of title*
10 *5, United States Code;*

11 (2) *the term “regulatory action” means any sub-*
12 *stantive action by an agency that promulgates or is*
13 *expected to lead to the promulgation of a final rule*
14 *or regulation, including notices of inquiry, advance*
15 *notices of proposed rulemaking, and notices of pro-*
16 *posed rulemaking, but not including any substantive*
17 *action by an agency for repealing a rule;*

18 (3) *the term “significant regulatory action”*
19 *means any regulatory action that is likely to result*
20 *in a rule or guidance that may—*

21 (A) *have an annual cost to the economy of*
22 *\$100,000,000 or more or adversely affect in a*
23 *material way the economy, a sector of the econ-*
24 *omy, productivity, competition, jobs, the environ-*
25 *ment, public health or safety, small entities, or*

1 *State, local, or tribal governments or commu-*
2 *nities;*

3 *(B) create a serious inconsistency or other-*
4 *wise interfere with an action taken or planned*
5 *by another agency;*

6 *(C) materially alter the budgetary impact of*
7 *entitlements, grants, user fees, or loan programs*
8 *or the rights and obligations of recipients thereof;*
9 *or*

10 *(D) raise novel legal or policy issues; and*

11 *(4) the term “small entities” has the meaning*
12 *given such term under section 601(6) of title 5,*
13 *United States Code.*

14 **SEC. 3. SIGNIFICANT REGULATORY ACTIONS.**

15 *(a) IN GENERAL.—No agency may take any signifi-*
16 *cant regulatory action during the period beginning on the*
17 *date of enactment of this Act and ending on the date that*
18 *the Secretary of Labor submits the report under subsection*
19 *(b).*

20 *(b) DETERMINATION.—The Secretary of Labor shall*
21 *submit a report to the Director of the Office of Management*
22 *and Budget whenever the Secretary determines that the Bu-*
23 *reau of Labor Statistics average of monthly unemployment*
24 *rates for any quarter beginning after the date of enactment*
25 *of this Act is equal to or less than 6.0 percent.*

1 **SEC. 4. WAIVERS.**

2 (a) *IN GENERAL.*—Notwithstanding any other provi-
3 sion of this Act, an agency may take a significant regu-
4 latory action only in accordance with either subsection (b)
5 or subsection (c) during the period described in section 3(a).

6 (b) *PRESIDENTIAL WAIVER.*—An agency may take a
7 significant regulatory action if the President determines by
8 Executive order that the significant regulatory action is—

9 (1) *necessary because of an imminent threat to*
10 *health or safety or other emergency;*

11 (2) *necessary for the enforcement of criminal*
12 *laws;*

13 (3) *necessary for the national security of the*
14 *United States; or*

15 (4) *issued pursuant to any statute implementing*
16 *an international trade agreement.*

17 (c) *CONGRESSIONAL WAIVERS.*—

18 (1) *SUBMISSION.*—For any significant regu-
19 latory action not eligible for a Presidential waiver
20 pursuant to subsection (b), the President may submit
21 a written request to Congress for a waiver of the ap-
22 plication of section 3 to the significant regulatory ac-
23 tion.

24 (2) *CONTENTS.*—A submission by the President
25 under this subsection shall—

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

3 (B) give all reasons why the significant reg-
4 ulatory action is necessary to protect the public
5 health, safety, or welfare; and

6 (C) explain why the significant regulatory
7 action is ineligible for a Presidential waiver
8 pursuant to subsection (b).

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

13 **SEC. 5. JUDICIAL REVIEW.**

14 (a) REVIEW.—Any party adversely affected or ag-
15 grieved by any regulatory action taken in violation of this
16 Act is entitled to judicial review in accordance with chapter
17 7 of title 5, United States Code. Any determination by ei-
18 ther the President or the Secretary of Labor under this Act
19 shall be subject to judicial review under such chapter.

20 (b) JURISDICTION.—Each court having jurisdiction to
21 review any significant regulatory action for compliance
22 with any other provision of law shall have jurisdiction to
23 review all claims under this Act.

24 (c) RELIEF.—In granting any relief in any civil ac-
25 tion under this section, the court shall order the agency to

1 *take corrective action consistent with this Act and chapter*
2 *7 of title 5, United States Code, including remanding the*
3 *significant regulatory action to the agency and enjoining*
4 *the application or enforcement of that significant regu-*
5 *latory action, unless the court finds by a preponderance of*
6 *the evidence that application or enforcement is required to*
7 *protect against an imminent and serious threat to the na-*
8 *tional security of the United States.*

9 *(d) REASONABLE ATTORNEY’S FEES FOR SMALL BUSI-*
10 *NESSES.—The court shall award reasonable attorney’s fees*
11 *and costs to a substantially prevailing small business in*
12 *any civil action arising under this Act. A small business*
13 *may qualify as substantially prevailing even without ob-*
14 *taining a final judgment in its favor if the agency that*
15 *took the significant regulatory action changes its position*
16 *after the civil action is filed.*

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

24 *(f) DEFINITION.—In this section, the term “small busi-*
25 *ness” means any business, including an unincorporated*

1 *business or a sole proprietorship, that employs not more*
2 *than 500 employees or that has a net worth of less than*
3 *\$7,000,000 on the date a civil action arising under this Act*
4 *is filed.*

5 **SECTION 1. SHORT TITLE.**

6 **This Act may be cited as the “Regulatory**
7 **Freeze for Jobs Act of 2012”.**

8 **SEC. 2. MORATORIUM ON FINAL SIGNIFICANT REGU-**
9 **LATORY ACTIONS.**

10 **An agency may not take any final signifi-**
11 **cant regulatory action during the period be-**
12 **ginning on the date of the enactment of this**
13 **Act and ending on the date that is the earlier**
14 **of—**

15 **(1) two years after such date of enact-**
16 **ment; or**

17 **(2) the date on which the national un-**
18 **employment rate, as published by the Bu-**
19 **reau of Labor Statistics, is first equal to**
20 **or less than 6.0 percent.**

21 **SEC. 3. WAIVERS AND EXCEPTIONS.**

22 **(a) IN GENERAL.—Notwithstanding any**
23 **other provision of this Act, an agency may**
24 **take final significant regulatory action only in**

1 accordance with subsection (b), (c), (d), or (e)
2 during the period described in section 2.

3 **(b) PRESIDENTIAL WAIVER.—An agency may**
4 **take final significant regulatory action if the**
5 **President determines that the final signifi-**
6 **cant regulatory action is—**

7 (1) necessary because of an imminent
8 threat to health or safety or other emer-
9 gency;

10 (2) necessary for the enforcement of
11 criminal laws;

12 (3) necessary for the national security
13 of the United States; or

14 (4) issued pursuant to any statute im-
15 plementing an international trade agree-
16 ment.

17 **(c) DEREGULATORY EXCEPTION.—An agency**
18 **may take a final significant regulatory action**
19 **if the Administrator of the Office of Informa-**
20 **tion and Regulatory Affairs of the Office of**
21 **Management and Budget certifies in writing**
22 **that the final significant regulatory action is**
23 **limited to repealing an existing rule.**

24 **(d) EXCEPTION FOR THE DEPARTMENT OF DE-**
25 **FENSE AND THE DEPARTMENT OF VETERANS AF-**

1 **FAIRS.—The Department of Defense and the**
2 **Department of Veterans Affairs may take a**
3 **final significant regulatory action if such ac-**
4 **tion affects the health or safety of members of**
5 **the Armed Forces or veterans.**

6 **(e) EXCEPTION FOR EQUAL PROTECTION AND**
7 **CIVIL RIGHTS.—An agency may take a final sig-**
8 **nificant regulatory action if such action is to**
9 **establish or enforce any statutory rights**
10 **against discrimination on the basis of age,**
11 **race, religion, gender, national origin, or**
12 **handicapped or disability status except such**
13 **final significant regulatory actions that estab-**
14 **lish, lead to, or otherwise rely on the use of**
15 **a quota or preference based on age, race, reli-**
16 **gion, gender, national origin, or handicapped**
17 **or disability status.**

18 **SEC. 4. DETERMINATION OF MAJOR GUIDANCE.**

19 **Before the issuance of any guidance, the**
20 **head of an agency shall transmit any pro-**
21 **posed guidance to the Administrator of the**
22 **Office of Information and Regulatory Affairs**
23 **of the Office of Management and Budget, who**
24 **shall make a finding as to whether such pro-**
25 **posed guidance is a major guidance.**

1 **SEC. 5. JUDICIAL REVIEW.**

2 **(a) REVIEW.—Any party adversely affected**
3 **or aggrieved by any rule or guidance result-**
4 **ing from a final significant regulatory action**
5 **taken in violation of this Act is entitled to ju-**
6 **dicial review in accordance with chapter 7 of**
7 **title 5, United States Code. Any determination**
8 **by either the President or the Secretary of**
9 **Labor under this Act shall be subject to judi-**
10 **cial review under such chapter.**

11 **(b) JURISDICTION.—Each court having ju-**
12 **risdiction to review any rule or guidance re-**
13 **sulting from a final significant regulatory ac-**
14 **tion for compliance with any other provision**
15 **of law shall have jurisdiction to review all**
16 **claims under this Act.**

17 **(c) RELIEF.—In granting any relief in any**
18 **civil action under this section, the court shall**
19 **order the agency to take corrective action**
20 **consistent with this Act and chapter 7 of title**
21 **5, United States Code, including remanding**
22 **the rule or guidance resulting from the final**
23 **significant regulatory action to the agency**
24 **and enjoining the application or enforcement**
25 **of that rule or guidance, unless the court**
26 **finds by a preponderance of the evidence that**

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

4 (d) REASONABLE ATTORNEY'S FEES FOR
5 SMALL BUSINESSES.—The court shall award
6 reasonable attorney's fees and costs to a sub-
7 stantially prevailing small business in any
8 civil action arising under this Act. A small
9 business may qualify as substantially pre-
10 vailing even without obtaining a final judg-
11 ment in its favor if the agency that took the
12 final significant regulatory action changes its
13 position after the civil action is filed.

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

23 (f) SMALL BUSINESS DEFINED.—In this sec-
24 tion, the term “small business” means any
25 business, including an unincorporated busi-

1 **ness or a sole proprietorship, that employs**
2 **not more than 500 employees or that has a net**
3 **worth of less than \$7,000,000 on the date a**
4 **civil action arising under this Act is filed.**

5 **SEC. 6. DEFINITIONS.**

6 **In this Act:**

7 (1) **AGENCY.**—The term “agency” has
8 the meaning given that term under sec-
9 tion 551 of title 5, United States Code, ex-
10 cept that such term does not include—

11 (A) the Federal Election Commis-
12 sion;

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

15 (C) the Federal Deposit Insurance
16 Corporation; or

17 (D) the United States Postal Serv-
18 ice.

19 (2) **FINAL SIGNIFICANT REGULATORY AC-**
20 **TION.**—The term “final significant regu-
21 latory action” means the promulgation of
22 any major rule or the issuance of any
23 major guidance.

24 (3) **MAJOR GUIDANCE.**—The term
25 “major guidance” means any guidance

1 **that the Administrator of the Office of In-**
2 **formation and Regulatory Affairs of the**
3 **Office of Management and Budget finds is**
4 **likely to result in—**

5 **(A) an annual effect on the econ-**
6 **omy of \$100,000,000 or more;**

7 **(B) a major increase in costs or**
8 **prices for consumers, individual in-**
9 **dustries, Federal, State, or local gov-**
10 **ernment agencies, or geographic re-**
11 **gions; or**

12 **(C) significant adverse effects on**
13 **competition, employment, investment,**
14 **productivity, innovation, or on the**
15 **ability of United States-based enter-**
16 **prises to compete with foreign-based**
17 **enterprises in domestic and export**
18 **markets.**

19 **(4) MAJOR RULE.—The term “major**
20 **rule” means any rule that the Adminis-**
21 **trator of the Office of Information and**
22 **Regulatory Affairs of the Office of Man-**
23 **agement and Budget finds is likely to re-**
24 **sult in—**

1 **(A) an annual effect on the econ-**
2 **omy of \$100,000,000 or more;**

3 **(B) a major increase in costs or**
4 **prices for consumers, individual in-**
5 **dustries, Federal, State, or local gov-**
6 **ernment agencies, or geographic re-**
7 **gions; or**

8 **(C) significant adverse effects on**
9 **competition, employment, investment,**
10 **productivity, innovation, or on the**
11 **ability of United States-based enter-**
12 **prises to compete with foreign-based**
13 **enterprises in domestic and export**
14 **markets.**

15 **(5) RULE.—The term “rule” has the**
16 **meaning given that term under section**
17 **551 of title 5, United States Code.**

Amend the title so as to read: “A bill to provide that no agency may take any final significant regulatory action for two years or until the unemployment rate is equal to or less than 6.0 percent, whichever occurs earlier, and for other purposes.”.

Union Calendar No. 446

112TH CONGRESS
2^D SESSION

H. R. 4078

[Report No. 112-461, Parts I and II]

A BILL

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

JULY 20, 2012

Reported from the Committee on Oversight and Government Reform with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed