

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 3010**

**OFFERED BY \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Regulatory Account-  
3 ability Act of 2011”.

**4 SEC. 2. GUIDELINES FOR RULEMAKING.**

5       (a) IN GENERAL.—Subchapter II of chapter 5 of title  
6 5, United States Code, is amended by inserting after sec-  
7 tion 553 the following new section:

**8 “§ 553a. Guidelines for rulemaking**

9       “(a) APPLICABILITY.—This section applies to any  
10 agency conducting or considering a rulemaking proceeding  
11 under this subchapter for the formulation of a rule (as  
12 defined in subsection (j)).

13       “(b) AGENCY REQUIREMENTS.—Each agency shall,  
14 among other things—

15               “(1) propose or adopt a rule only upon a rea-  
16 soned determination that its benefits justify its costs  
17 (recognizing that some benefits and costs are dif-  
18 ficult to quantify);

1           “(2) tailor its rules to impose the least burden  
2           on society, consistent with obtaining regulatory ob-  
3           jectives, taking into account, among other things,  
4           and to the extent practicable, the costs of cumulative  
5           rules;

6           “(3) select, in choosing among alternative regu-  
7           latory approaches, those approaches that maximize  
8           net benefits (including potential economic, environ-  
9           mental, public health and safety, and other advan-  
10          tages, distributive impacts, and equity);

11          “(4) to the extent feasible, specify performance  
12          objectives, rather than specifying the behavior or  
13          manner of compliance that regulated entities must  
14          adopt; and

15          “(5) identify and assess available alternatives to  
16          direct regulation, including providing economic in-  
17          centives to encourage the desired behavior, such as  
18          user fees or marketable permits, or providing infor-  
19          mation upon which choices can be made by the pub-  
20          lic.

21          “(c) **TECHNIQUES TO QUANTIFY PRESENT AND FU-**  
22          **TURE BENEFITS AND COSTS.**—In applying the principles  
23          set forth in subsection (b), each agency shall use the best  
24          available techniques to quantify anticipated present and  
25          future benefits and costs of rules as accurately as possible.

1 Where appropriate and otherwise permitted by law, each  
2 agency may consider (and discuss qualitatively) values  
3 that are difficult or impossible to quantify, including eq-  
4 uity, human dignity, fairness, and distributive impacts.

5 “(d) PUBLIC PARTICIPATION.—

6 “(1) EXCHANGE OF INFORMATION.—Rules shall  
7 be adopted through a process that involves public  
8 participation. To that end, rules shall be based, to  
9 the extent feasible and consistent with law, on the  
10 open exchange of information and perspectives  
11 among State, local, and tribal officials, experts in  
12 relevant disciplines, affected stakeholders in the pri-  
13 vate sector, and the public as a whole.

14 “(2) PUBLIC PARTICIPATION.—To promote the  
15 open exchange of information and perspectives de-  
16 scribed in paragraph (1), each agency, consistent  
17 with other applicable legal requirements, shall en-  
18 deavor to provide the public with an opportunity to  
19 participate in the regulatory process. To the extent  
20 feasible and otherwise permitted by law, each agency  
21 shall afford the public a meaningful opportunity to  
22 comment through the Internet on any proposed rule,  
23 with a comment period that should generally be at  
24 least 60 days. To the extent feasible and otherwise  
25 permitted by law, each agency shall also provide, for

1 both proposed and final rules, timely online access to  
2 the rulemaking docket, including relevant scientific  
3 and technical findings, in an open format that can  
4 be easily searched and downloaded. For proposed  
5 rules, such access shall include, to the extent feasible  
6 and otherwise permitted by law, an opportunity for  
7 public comment on all pertinent parts of the rule-  
8 making docket, including relevant scientific and  
9 technical findings.

10 “(3) VIEWS OF AFFECTED PARTIES.—Before  
11 issuing a notice of proposed rulemaking, each agen-  
12 cy, where feasible and appropriate, shall seek the  
13 views of those who are likely to be affected, includ-  
14 ing those who are likely to benefit from and those  
15 who are potentially subject to such rulemaking.

16 “(e) INTEGRATION AND INNOVATION.—In developing  
17 regulatory actions and identifying appropriate approaches,  
18 each agency shall attempt to promote coordination across  
19 agencies and simplification and harmonization of rules in  
20 order to eliminate redundant, inconsistent, or overlapping  
21 rules. Each agency shall also seek to identify, as appro-  
22 priate, means to achieve regulatory goals that are designed  
23 to promote innovation.

24 “(f) FLEXIBLE APPROACHES.—Where relevant, fea-  
25 sible, and consistent with regulatory objectives, and to the

1 extent otherwise permitted by law, each agency shall iden-  
2 tify and consider regulatory approaches that reduce bur-  
3 dens and maintain flexibility and freedom of choice for the  
4 public. These approaches include warnings, appropriate  
5 default rules, and disclosure requirements, as well as pro-  
6 vision of information to the public in a form that is clear  
7 and intelligible.

8 “(g) SCIENCE.—Each agency shall ensure the objec-  
9 tivity of any scientific and technological information and  
10 processes used to support the agency’s regulatory actions.

11 “(h) RETROSPECTIVE ANALYSES OF EXISTING  
12 RULES.—

13 “(1) DEVELOPMENT OF PERIODIC REVIEW OF  
14 RULES.—To facilitate the periodic review of existing  
15 significant rules, agencies shall consider how best to  
16 promote retrospective analysis of rules that may be  
17 outmoded, ineffective, insufficient, or excessively  
18 burdensome, and to modify, streamline, expand, or  
19 repeal such rules in accordance with such analysis.  
20 Such retrospective analyses, including supporting  
21 data, should be released online whenever possible.

22 “(2) SUBMISSION OF PLAN FOR PERIODIC RE-  
23 VIEW.—Within 120 days after the date of the enact-  
24 ment of this section, each agency shall develop and  
25 submit to the Office of Information and Regulatory

1       Affairs a preliminary plan, consistent with law and  
2       its resources and regulatory priorities, under which  
3       the agency will periodically review its existing signifi-  
4       cant rules to determine whether any such rules  
5       should be modified, streamlined, expanded, or re-  
6       pealed so as to make the agency's regulatory pro-  
7       gram more effective or less burdensome in achieving  
8       the regulatory objectives.

9       “(i) GENERAL PROVISIONS.—

10           “(1) OTHER AUTHORITIES NOT AFFECTED.—

11       Nothing in this section shall be construed to impair  
12       or otherwise affect—

13           “(A) authority otherwise granted by law to  
14           an agency, or the head thereof; or

15           “(B) functions of the Director of the Of-  
16           fice of Management and Budget relating to  
17           budgetary, administrative, or legislative pro-  
18           posals.

19           “(2) IMPLEMENTATION.—This section shall be  
20       implemented consistent with otherwise applicable law  
21       and subject to the availability of appropriations.

22           “(3) RIGHTS OR BENEFITS NOT CREATED.—

23       This section is not intended to, and does not, create  
24       any right or benefit, substantive or procedural, en-  
25       forceable at law or in equity by any party against

1 the United States, its departments, agencies, or enti-  
2 ties, its officers, employees, or agents, or any other  
3 person.

4 “(j) DEFINITIONS.—In this section:

5 “(1) AGENCY.—The term ‘agency’ means any  
6 authority of the United States that is an agency  
7 under section 3502(1) of title 44, other than those  
8 considered to be independent regulatory agencies, as  
9 defined in section 3502(5) of such title.

10 “(2) OFFICE OF INFORMATION AND REGU-  
11 LATORY AFFAIRS.—The term ‘Office of Information  
12 and Regulatory Affairs’ means the office established  
13 under section 3503 of title 44 and any successor to  
14 that office.”.

15 (b) CONFORMING AMENDMENT.—The table of sec-  
16 tions for chapter 5 of title 5, United States Code, is  
17 amended by inserting after the item relating to section  
18 553 the following new item:

“553a. Guidelines for rulemaking.”.

19 **SEC. 3. EFFECTIVE DATE.**

20 The amendments made by this Act take effect on the  
21 date of the enactment of this Act.

