

**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. FINDINGS.

5 The Congress finds the following:

6 (1) The regulatory system of the United
7 States—

8 (A) must protect public health, welfare,
9 safety, and the environment while promoting
10 economic growth, innovation, competitiveness,
11 and job creation;

12 (B) must be based on the best available
13 science;

14 (C) must allow for public participation and
15 an open exchange of ideas;

16 (D) must promote predictability and re-
17 duce uncertainty;

1 (E) must identify and use the best, most
2 innovative, and least burdensome tools for
3 achieving regulatory ends;

4 (F) must take into account benefits and
5 costs, both quantitative and qualitative;

6 (G) must ensure that rules are accessible,
7 consistent, written in plain language, and easy
8 to understand; and

9 (H) must measure, and seek to improve,
10 the actual results of regulatory requirements.

11 (2) Some sectors and industries face a signifi-
12 cant number of regulatory requirements, some of
13 which may be redundant, inconsistent, or overlap-
14 ping.

15 (3) Greater coordination across agencies could
16 reduce such requirements, thus reducing costs and
17 simplifying and harmonizing rules.

18 **SEC. 3. GUIDELINES FOR RULEMAKING.**

19 (a) IN GENERAL.—Subchapter II of chapter 5 of title
20 5, United States Code, is amended by inserting after sec-
21 tion 553 the following new section:

22 **“§ 553a. Guidelines for rulemaking**

23 “(a) APPLICABILITY.—This section applies to any
24 agency conducting or considering a rulemaking proceeding

1 under this subchapter for the formulation of a rule (as
2 defined in subsection (j)).

3 “(b) AGENCY REQUIREMENTS.—Each agency shall,
4 among other things—

5 “(1) propose or adopt a rule only upon a rea-
6 soned determination that its benefits justify its costs
7 (recognizing that some benefits and costs are dif-
8 ficult to quantify);

9 “(2) tailor its rules to impose the least burden
10 on society, consistent with obtaining regulatory ob-
11 jectives, taking into account, among other things,
12 and to the extent practicable, the costs of cumulative
13 rules;

14 “(3) select, in choosing among alternative regu-
15 latory approaches, those approaches that maximize
16 net benefits (including potential economic, environ-
17 mental, public health and safety, and other advan-
18 tages, distributive impacts, and equity);

19 “(4) to the extent feasible, specify performance
20 objectives, rather than specifying the behavior or
21 manner of compliance that regulated entities must
22 adopt; and

23 “(5) identify and assess available alternatives to
24 direct regulation, including providing economic in-
25 centives to encourage the desired behavior, such as

1 user fees or marketable permits, or providing infor-
2 mation upon which choices can be made by the pub-
3 lic.

4 “(c) TECHNIQUES TO QUANTIFY PRESENT AND FU-
5 TURE BENEFITS AND COSTS.—In applying the principles
6 set forth in subsection (b), each agency shall use the best
7 available techniques to quantify anticipated present and
8 future benefits and costs of rules as accurately as possible.
9 Where appropriate and otherwise permitted by law, each
10 agency may consider (and discuss qualitatively) values
11 that are difficult or impossible to quantify, including eq-
12 uity, human dignity, fairness, and distributive impacts.

13 “(d) PUBLIC PARTICIPATION.—

14 “(1) EXCHANGE OF INFORMATION.—Rules shall
15 be adopted through a process that involves public
16 participation. To that end, rules shall be based, to
17 the extent feasible and consistent with law, on the
18 open exchange of information and perspectives
19 among State, local, and tribal officials, experts in
20 relevant disciplines, affected stakeholders in the pri-
21 vate sector, and the public as a whole.

22 “(2) PUBLIC PARTICIPATION.—To promote the
23 open exchange of information and perspectives de-
24 scribed in paragraph (1), each agency, consistent
25 with other applicable legal requirements, shall en-

1 deavor to provide the public with an opportunity to
2 participate in the regulatory process. To the extent
3 feasible and otherwise permitted by law, each agency
4 shall afford the public a meaningful opportunity to
5 comment through the Internet on any proposed rule,
6 with a comment period that should generally be at
7 least 60 days. To the extent feasible and otherwise
8 permitted by law, each agency shall also provide, for
9 both proposed and final rules, timely online access to
10 the rulemaking docket, including relevant scientific
11 and technical findings, in an open format that can
12 be easily searched and downloaded. For proposed
13 rules, such access shall include, to the extent feasible
14 and otherwise permitted by law, an opportunity for
15 public comment on all pertinent parts of the rule-
16 making docket, including relevant scientific and
17 technical findings.

18 “(3) VIEWS OF AFFECTED PARTIES.—Before
19 issuing a notice of proposed rulemaking, each agen-
20 cy, where feasible and appropriate, shall seek the
21 views of those who are likely to be affected, includ-
22 ing those who are likely to benefit from and those
23 who are potentially subject to such rulemaking.

24 “(e) INTEGRATION AND INNOVATION.—In developing
25 regulatory actions and identifying appropriate approaches,

1 each agency shall attempt to promote coordination across
2 agencies and simplification and harmonization of rules in
3 order to eliminate redundant, inconsistent, or overlapping
4 rules. Each agency shall also seek to identify, as appro-
5 priate, means to achieve regulatory goals that are designed
6 to promote innovation.

7 “(f) FLEXIBLE APPROACHES.—Where relevant, fea-
8 sible, and consistent with regulatory objectives, and to the
9 extent otherwise permitted by law, each agency shall iden-
10 tify and consider regulatory approaches that reduce bur-
11 dens and maintain flexibility and freedom of choice for the
12 public. These approaches include warnings, appropriate
13 default rules, and disclosure requirements, as well as pro-
14 vision of information to the public in a form that is clear
15 and intelligible.

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

19 “(h) RETROSPECTIVE ANALYSES OF EXISTING
20 RULES.—

21 “(1) DEVELOPMENT OF PERIODIC REVIEW OF
22 RULES.—To facilitate the periodic review of existing
23 significant rules, agencies shall consider how best to
24 promote retrospective analysis of rules that may be
25 outmoded, ineffective, insufficient, or excessively

1 burdensome, and to modify, streamline, expand, or
2 repeal such rules in accordance with such analysis.
3 Such retrospective analyses, including supporting
4 data, should be released online whenever possible.

5 “(2) SUBMISSION OF PLAN FOR PERIODIC RE-
6 VIEW.—Within 120 days after the date of the enact-
7 ment of this section, each agency shall develop and
8 submit to the Office of Information and Regulatory
9 Affairs a preliminary plan, consistent with law and
10 its resources and regulatory priorities, under which
11 the agency will periodically review its existing signifi-
12 cant rules to determine whether any such rules
13 should be modified, streamlined, expanded, or re-
14 pealed so as to make the agency’s regulatory pro-
15 gram more effective or less burdensome in achieving
16 the regulatory objectives.

17 “(i) GENERAL PROVISIONS.—

18 “(1) OTHER AUTHORITIES NOT AFFECTED.—
19 Nothing in this section shall be construed to impair
20 or otherwise affect—

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

23 “(B) functions of the Director of the Of-
24 fice of Management and Budget relating to

1 budgetary, administrative, or legislative pro-
2 posals.

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

6 “(3) RIGHTS OR BENEFITS NOT CREATED.—
7 This section is not intended to, and does not, create
8 any right or benefit, substantive or procedural, en-
9 forceable at law or in equity by any party against
10 the United States, its departments, agencies, or enti-
11 ties, its officers, employees, or agents, or any other
12 person.

13 “(j) DEFINITIONS.—In this section:

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

19 “(2) OFFICE OF INFORMATION AND REGU-
20 LATORY AFFAIRS.—The term ‘Office of Information
21 and Regulatory Affairs’ means the office established
22 under section 3503 of title 44 and any successor to
23 that office.”.

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions for chapter 5 of title 5, United States Code, is

1 amended by inserting after the item relating to section

2 553 the following new item:

“553a. Guidelines for rulemaking.”.

3 **SEC. 4. EFFECTIVE DATE.**

4 The amendments made by this Act take effect on the

5 date of the enactment of this Act.

