

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4012
OFFERED BY MS. BONAMICI

Strike all after the enacting clause and insert the following:

1 **SEC. 1. SHORT TITLE.**

2 This Act may be cited as the “Promoting Public Ac-
3 cess and Transparency at EPA Act of 2014”.

4 **SEC. 2. PUBLIC ACCESS TO PUBLIC SCIENCE.**

5 (a) PUBLIC ACCESS POLICY.—

6 (1) IN GENERAL.—The Administrator of the
7 Environmental Protection Agency (in this Act re-
8 ferred to as the “Administrator”) shall formulate
9 and implement a public access policy to make cov-
10 ered works publicly available, without charge, on the
11 day after the end of the embargo period, in a man-
12 ner consistent with copyright law.

13 (2) SPECIFICATIONS.—The public access policy
14 shall—

15 (A) allow the public to read, download, and
16 analyze by machine covered works in digital
17 form;

1 (B) facilitate easy public search of, anal-
2 ysis of, and access to covered works;

3 (C) encourage public-private collaboration
4 to—

5 (i) maximize the potential for inter-
6 operability between public and private plat-
7 forms;

8 (ii) avoid unnecessary duplication of
9 existing mechanisms; and

10 (iii) maximize the impact of the agen-
11 cy's research investment;

12 (D) ensure that attribution to authors,
13 journals, and original publishers is maintained;
14 and

15 (E) ensure that publications and metadata
16 are stored in an archive that—

17 (i) provides for long-term preservation
18 and access to full content of the covered
19 work without charge, where appropriate,
20 and balancing cost and public value;

21 (ii) uses a standard, widely available,
22 and, to the extent possible, nonproprietary
23 archival format for text and associated
24 content, including images, video, and sup-
25 porting data;

1 (iii) provides access for persons with
2 disabilities consistent with section 508 of
3 the Rehabilitation Act of 1973 (29 U.S.C.
4 794d); and

5 (iv) enables integration and interoper-
6 ability with other public access reposi-
7 tories.

8 (3) METADATA.—Notwithstanding paragraph
9 (1), the public access policy shall ensure full public
10 access to covered works' metadata without charge
11 upon first publication in a data format that ensures
12 interoperability with current and anticipated future
13 search technology. Where possible, the metadata
14 shall provide a link to the location where the full
15 text and associated supplemental materials will be
16 made available at the end of the applicable embargo
17 period.

18 (b) FORMULATION OF A PUBLIC ACCESS POLICY.—

19 (1) IN GENERAL.—The public access policy
20 shall include—

21 (A) a strategy for enabling the public to
22 electronically locate and access publications re-
23 sulting from federally funded scientific re-
24 search;

1 (B) a strategy for maintaining a repository
2 or repositories, either within the agency or
3 through an arrangement with another Federal
4 agency or agencies or through an arrangement
5 with a public or private entity, if consistent
6 with the purposes of this section, including free
7 public access in perpetuity, interoperability, and
8 long-term preservation, so long as the agency
9 maintains an active web link to the repository
10 or repositories for public access;

11 (C) a strategy for incorporating existing
12 covered works into the repository or repositories
13 required under subparagraph (B) to the extent
14 practicable;

15 (D) a strategy for notifying research fund-
16 ing recipients of their obligations under this
17 section; and

18 (E) a strategy for taking into account dif-
19 ferent funding models for scholarly publishing,
20 including author-pays fees, in the agency's
21 grant and other funding mechanisms.

22 (2) COORDINATION WITH STAKEHOLDERS.—In
23 developing its public access policy, the Administrator
24 shall use a transparent process for soliciting views
25 from stakeholders, including federally funded re-

1 searchers, institutions of higher education, libraries,
2 publishers, users of federally funded research re-
3 sults, and civil society groups.

4 (3) COORDINATION WITH OTHER FEDERAL
5 AGENCIES.—In developing its public access policy,
6 the Administrator shall collaborate and coordinate
7 with other Federal agencies to maximize the consist-
8 ency and compatibility of public access across the
9 Federal Government.

10 (4) REPORT TO CONGRESS.—Not later than 90
11 days after the date of enactment of this Act, the Ad-
12 ministrator shall transmit a report, containing its
13 public access policy and the mechanism described in
14 subsection (e), to the Committee on Science, Space,
15 and Technology of the House of Representatives and
16 the Committee on Commerce, Science, and Trans-
17 portation of the Senate. Such report shall include an
18 examination of whether covered works should include
19 a royalty-free copyright license that is available to
20 the public and that permits the reuse of those re-
21 search papers, on the condition that attribution is
22 given to the author or authors of the research and
23 any others designated by the copyright owner.

24 (c) IMPLEMENTATION OF PUBLIC ACCESS POLICY.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the transmission of the report required under sub-
3 section (b)(4), the Administrator shall implement its
4 public access policy.

5 (2) INPUT.—The implementation of such policy,
6 including the mechanism described in subsection (e),
7 shall consider input provided by relevant stake-
8 holders and other Federal agencies.

9 (3) SAVINGS PROVISION.—Nothing in this sec-
10 tion shall affect the application of United States
11 copyright law.

12 (d) PERIODIC REVIEW.—

13 (1) IN GENERAL.—At least once every 5 years,
14 the Administrator shall revise, as necessary, the
15 public access policy, including the mechanism de-
16 scribed in subsection (e).

17 (2) REPORT TO CONGRESS.—The Administrator
18 shall transmit a report containing the public access
19 policy and the mechanism described in subsection
20 (e), as revised under paragraph (1), to the Com-
21 mittee on Science, Space, and Technology of the
22 House of Representatives and the Committee on
23 Commerce, Science, and Transportation of the Sen-
24 ate not later than 30 days after completing such re-
25 vision.

1 (e) MECHANISM FOR MODIFICATION OF EMBARGO
2 PERIOD.—The Administrator, in coordination with the
3 stakeholders described in subsection (b)(2), shall provide
4 a mechanism for a stakeholder to petition to change the
5 embargo period under this section for specific covered
6 works by presenting evidence that the public interest will
7 be substantially and uniquely harmed under the agency’s
8 public access policy related to such work. If the Adminis-
9 trator determines that the public interest will be substan-
10 tially and uniquely harmed upon reviewing the petition,
11 the agency may change the embargo period by no more
12 than 6 months at a time from its current embargo period.

13 (f) DEFINITIONS.—For the purposes of this Act—

14 (1) the term “Administrator” means the Ad-
15 ministrator of the Agency;

16 (2) the term “agency” means the Environ-
17 mental Protection Agency;

18 (3) the term “covered work” means any peer-
19 reviewed research results published in scholarly pub-
20 lications that are based on research funded in whole
21 or in part by the agency, but such term does not in-
22 clude—

23 (A) research progress reports presented at
24 professional meetings or conferences;

1 (B) laboratory notes, preliminary data
2 analyses, notes of the author, phone logs, or
3 other information used to produce final manu-
4 scripts;

5 (C) classified research; or

6 (D) work not submitted to a peer-reviewed
7 publication or work that is rejected by a peer-
8 reviewed publication; and

9 (4) the term “embargo period” means the pe-
10 riod of time no more than 12 months after the ini-
11 tial date of publication of a covered work, unless
12 modified under subsection (e).

13 **SEC. 3. PROTECTING PRIVACY AND PUBLIC HEALTH.**

14 (a) **ENSURING THE USE OF THE BEST AVAILABLE**
15 **SCIENCE.**—In developing an agency action that has the
16 force and effect of law, the Administrator shall consider
17 the best available science and shall not exclude from con-
18 sideration published research findings that include re-
19 search data that is not made available to the public be-
20 cause the disclosure of which would constitute a clearly
21 unwarranted invasion of personal privacy, such as medical
22 information and other similar information that could be
23 used to identify a particular person in a research study.

24 (b) **RESPONSIBLE RESEARCH DATA DISCLOSURE.**—
25 In response to a Freedom of Information Act request (5

1 U.S.C. 552(a)(4)(A)) for research data relating to pub-
2 lished research findings produced under an award by the
3 agency that were used in developing an agency action that
4 has the force and effect of law, the Administrator shall
5 request, and the recipient shall provide, within a reason-
6 able time, the research data so that it can be made avail-
7 able to the public through the procedures established
8 under the Freedom of Information Act request. If the
9 agency obtains the research data solely in response to a
10 Freedom of Information Act request, the agency may
11 charge the requester a reasonable fee equaling the full in-
12 cremental cost of obtaining the research data. This fee
13 should reflect costs incurred by the agency, the recipient,
14 and applicable subrecipients. This fee is in addition to any
15 fees the agency may assess under the Freedom of Infor-
16 mation Act request.

17 (c) DEFINITIONS.—The following definitions apply
18 for purposes of this section:

19 (1) The term “research data” means the re-
20 corded factual material commonly accepted in the
21 scientific community as necessary to validate re-
22 search findings, but not preliminary analyses, drafts
23 of scientific papers, plans for future research, peer
24 reviews, communications with colleagues, or physical

1 objects such as laboratory samples. Research data
2 also does not include—

3 (A) trade secrets, commercial information,
4 materials necessary to be held confidential by a
5 researcher until they are published, or similar
6 information which is protected under law; and

7 (B) personnel and medical information and
8 similar information the disclosure of which
9 would constitute a clearly unwarranted invasion
10 of personal privacy, such as information that
11 could be used to identify a particular person in
12 a research study.

13 (2) The term “published” means either when—

14 (A) research findings are published in a
15 peer-reviewed scientific or technical journal; or

16 (B) the agency publicly and officially cites
17 the research findings in support of an agency
18 action that has the force and effect of law.

19 **SEC. 4. ENSURING TRANSPARENCY IN INDUSTRY-FUNDED**
20 **RESEARCH.**

21 The Administrator shall only consider peer reviewed
22 research results in scholarly publications that disclose the
23 entity that funded such research.

