Calendar No. 203

112TH CONGRESS
1ST SESSION

S. 1720

To provide American jobs through economic growth.

IN THE SENATE OF THE UNITED STATES

OCTOBER 17, 2011

Mr. MCCAIN (for himself, Mr. PAUL, Mr. PORTMAN, Mr. MCCONNELL, Mr. CHAMBLISS, Mr. COATS, Mr. COCHRAN, Mr. CRAPO, Mr. DEMINT, Mr. GRASSLEY, Mr. HELLER, Mr. HOEVEN, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHANNS, Mr. JOHNSON of Wisconsin, Mr. KIRK, Mr. LEE, Mr. LUGAR, Mr. ROBERTS, Mr. RUBIO, Mr. TOOMEY, Mr. WICKER, Mr. SHELBY, Mr. THUNE, Mr. GRAHAM, Mr. VITTER, Mr. ENZI, Mr. BARRASSO, Mr. BLUNT, Mr. BOOZMAN, Mr. SESSIONS, Mr. BURR, and Mr. MORAN) introduced the following bill; which was read the first time

OCTOBER 18, 2011

Read the second time and placed on the calendar

A BILL

To provide American jobs through economic growth.

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 AND TABLE OF CONTENTS.
4 (a) Short Title.—This Act may be cited as the
5 “Jobs Through Growth Act”.

(b) **Table of Contents.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

DIVISION A—SPENDING REFORM

TITLE I—BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

Sec. 1101. Balanced Budget Amendment to the Constitution.

TITLE II—ENHANCED RESCISSION AUTHORITY

Sec. 1201. Purposes.
Sec. 1202. Rescissions of funding.
Sec. 1203. Technical and conforming amendments.
Sec. 1205. Expiration.

DIVISION B—TAX REFORM

TITLE I—TAX REFORM FOR FAMILIES AND SMALL BUSINESSES

Sec. 2101. Tax Reform for Families and Small Businesses.

TITLE II—TAX REFORM FOR EMPLOYERS

Sec. 2201. Reduction in corporate income tax rates and reform of business tax.

TITLE III—WITHHOLDING TAX RELIEF ACT OF 2011

Sec. 2301. Short title.
Sec. 2302. Repeal of imposition of withholding on certain payments made to vendors by government entities.
Sec. 2303. Rescission of unspent federal funds to offset loss in revenues.

DIVISION C—REGULATION REFORM

TITLE I—REPEALING THE JOB-KILLING HEALTH CARE LAW ACT


Sec. 3102. Budgetary effects of this subtitle.

TITLE II—MEDICAL CARE ACCESS PROTECTION ACT OF 2011

Sec. 3201. Short title.
Sec. 3202. Findings and purpose.
Sec. 3203. Definitions.
Sec. 3204. Encouraging speedy resolution of claims.
Sec. 3205. Compensating patient injury.
Sec. 3206. Maximizing patient recovery.
Sec. 3207. Additional health benefits.
Sec. 3208. Punitive damages.
Sec. 3209. Authorization of payment of future damages to claimants in health care lawsuits.
Sec. 3210. Effect on other laws.
Sec. 3211. State flexibility and protection of states’ rights.
Sec. 3212. Applicability; effective date.

TITLE III—FINANCIAL TAKEOVER REPEAL

Sec. 3301. Repeal.

TITLE IV—REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY (REINS ACT)

Sec. 3401. Short title.
Sec. 3402. Findings and purpose.
Sec. 3403. Congressional review of agency rulemaking.

TITLE V—REGULATION MORATORIUM AND JOBS PRESERVATION ACT

Sec. 3501. Short title.
Sec. 3502. Definitions.
Sec. 3503. Significant regulatory actions.
Sec. 3504. Waivers.
Sec. 3505. Judicial review.

TITLE VI—FREEDOM FROM RESTRICTIVE EXCESSIVE EXECUTIVE DEMANDS AND ONEROUS MANDATES ACT OF 2011

Sec. 3601. Short title.
Sec. 3602. Findings.
Sec. 3603. Including indirect economic impact in small entity analyses.
Sec. 3604. Judicial review to allow small entities to challenge proposed regulations.
Sec. 3605. Periodic review.
Sec. 3606. Requiring small business review panels for additional agencies.
Sec. 3607. Expanding the Regulatory Flexibility Act to agency guidance documents.
Sec. 3608. Requiring the Internal Revenue Service to consider small entity impact.
Sec. 3609. Reporting on enforcement actions relating to small entities.
Sec. 3610. Requiring more detailed small entity analyses.
Sec. 3611. Ensuring that agencies consider small entity impact during the rulemaking process.
Sec. 3612. Additional powers of the Office of Advocacy.
Sec. 3613. Funding and offsets.
Sec. 3614. Technical and conforming amendments.

TITLE VII—UNFUNDED MANDATES ACCOUNTABILITY ACT

Sec. 3701. Short title.
Sec. 3702. Findings.
Sec. 3703. Regulatory impact analyses for certain rules.
Sec. 3704. Least burdensome option or explanation required.
Sec. 3705. Inclusion of application to independent regulatory agencies.
Sec. 3706. Judicial review.
Sec. 3707. Effective date.

TITLE VIII—GOVERNMENT LITIGATION SAVINGS ACT
TITLE IX—EMPLOYMENT PROTECTION ACT OF 2011

Sec. 3901. Short title.
Sec. 3902. Impacts of EPA regulatory activity on employment and economic activity.

TITLE X—FARM DUST REGULATION PREVENTION ACT

Sec. 3931. Short title.
Sec. 3932. Nuisance dust.
Sec. 3933. Temporary prohibition against revising any national ambient air quality standard applicable to coarse particulate matter.

TITLE XI—NATIONAL LABOR RELATIONS BOARD REFORM

Sec. 3951. Short title.
Sec. 3952. Authority of the NLRB.
Sec. 3953. Retroactivity.

TITLE XII—GOVERNMENT NEUTRALITY IN CONTRACTING ACT

Sec. 3971. Short title.
Sec. 3972. Purposes.
Sec. 3973. Preservation of open competition and Federal Government neutrality.

TITLE XIII—FINANCIAL REGULATORY RESPONSIBILITY ACT

Sec. 3981. Short title.
Sec. 3982. Definitions.
Sec. 3983. Required regulatory analysis.
Sec. 3984. Rule of construction.
Sec. 3985. Public availability of data and regulatory analysis.
Sec. 3986. Five-year regulatory impact analysis.
Sec. 3987. Retrospective review of existing rules.
Sec. 3988. Judicial review.
Sec. 3989. Chief Economists Council.
Sec. 3990. Conforming amendments.
Sec. 3991. Other regulatory entities.
Sec. 3992. Avoidance of duplicative or unnecessary analyses.
Sec. 3993. Severability.

TITLE XIV—REGULATORY RESPONSIBILITY FOR OUR ECONOMY ACT

Sec. 3994. Short title.
Sec. 3995. Definitions.
Sec. 3996. Agency requirements.
Sec. 3997. Public participation.
Sec. 3998. Integration and innovation.
Sec. 3999. Flexible approaches.
Sec. 3999A. Science.
Sec. 3999B. Retrospective analyses of existing rules.
TITLE XV—REDUCING REGULATORY BURDENS ACT

Sec. 3999C. Short title.
Sec. 3999D. Use of authorized pesticides.
Sec. 3999E. Discharges of pesticides.

DIVISION D—DOMESTIC ENERGY JOB PROMOTION

TITLE I—DOMESTIC JOBS, DOMESTIC ENERGY, AND DEFICIT REDUCTION ACT

Sec. 4101. Short title.

Subtitle A—Outer Continental Shelf Leasing

Sec. 4111. Leasing program considered approved.
Sec. 4112. Lease sales.
Sec. 4113. Applications for permits to drill.
Sec. 4114. Lease sales for certain areas.

Subtitle B—Regulatory Streamlining

Sec. 4131. Commercial leasing program for oil shale resources on public land.
Sec. 4132. Jurisdiction over covered energy projects.
Sec. 4133. Environmental impact statements.
Sec. 4134. Clean air regulation.
Sec. 4135. Employment effects of actions under Clean Air Act.
Sec. 4136. Endangered species.
Sec. 4137. Reissuance of permits and leases.
Sec. 4138. Central Valley Project.
Sec. 4139. Beaufort Sea oil drilling project.
Sec. 4140. Environmental legal fees.

TITLE II—JOBS AND ENERGY PERMITTING ACT

Sec. 4201. Short title.
Sec. 4202. Air quality measurement.
Sec. 4203. Outer Continental Shelf source.
Sec. 4204. Permits.

TITLE III—AMERICAN ENERGY AND WESTERN JOBS ACT

Sec. 4301. Short title.
Sec. 4302. Rescission of certain instruction memoranda.
Sec. 4303. Amendments to the Mineral Leasing Act.
Sec. 4304. Annual report on revenues generated from multiple use of public land.
Sec. 4305. Federal onshore oil and natural gas production goal.
Sec. 4306. Oil shale.

TITLE IV—MINING JOBS PROTECTION ACT

Sec. 4401. Short title.
Sec. 4402. Permits for dredged or fill material.
Sec. 4403. Review of permits.

TITLE V—ENERGY TAX PREVENTION ACT

Sec. 4501. Short title.
Sec. 4502. No regulation of emissions of greenhouse gases.
Sec. 4503. Preserving one national standard for automobiles.

TITLE VI—REPEAL RESTRICTIONS ON GOVERNMENT USE OF DOMESTIC ALTERNATIVE FUELS

Sec. 4601. Repeal of unnecessary barrier to domestic fuel production.

TITLE VII—PUBLIC LANDS JOB CREATION ACT

Sec. 4701. Short title.
Sec. 4702. Review of certain Federal Register Notices.

DIVISION E—EXPORT PROMOTION

Sec. 5001. Short title.
Sec. 5002. Renewal of trade promotion authority.
Sec. 5003. Modification of standard for provisions that may be included in implementing bills.

DIVISION A—SPENDING REFORM
TITLE I—BALANCED BUDGET AMENDMENT TO THE CONSTITUTION

SEC. 1101. BALANCED BUDGET AMENDMENT TO THE CONSTITUTION.

It is the sense of Congress that S.J. Res 10 should be passed and submitted to the states for ratification not later than 90 days after the date of enactment of this Act.

TITLE II—ENHANCED RESCISSION AUTHORITY

SEC. 1201. PURPOSES.

The purpose of this title is to create an optional fast-track procedure the President may use when submitting rescission requests, which would lead to an up-or-down vote by Congress on the President’s package of rescissions, without amendment.
SEC. 1202. RESCISSIONS OF FUNDING.

The Impoundment Control Act of 1974 is amended by striking part C and inserting the following:

“PART C—EXPEDITED CONSIDERATION OF PROPOSED RESCISSIONS

“SEC. 1021. APPLICABILITY AND DISCLAIMER.

“The rules, procedures, requirements, and definitions in this part apply only to executive and legislative actions explicitly taken under this part. They do not apply to actions taken under part B or to other executive and legislative actions not taken under this part.

“SEC. 1022. DEFINITIONS.

“In this part:

“(1) The terms ‘appropriations Act’, ‘budget authority’, and ‘new budget authority’ have the same meanings as in section 3 of the Congressional Budget Act of 1974.


“(3) The term ‘days of session’ shall be calculated by excluding weekends and national holidays. Any day during which a chamber of Congress is not in session shall not be counted as a day of session.
of that chamber. Any day during which neither
chamber is in session shall not be counted as a day
of session of Congress.

“(4) The term ‘entitlement law’ means the stat-
utory mandate or requirement of the United States
to incur a financial obligation unless that obligation
is explicitly conditioned on the appropriation in sub-
sequent legislation of sufficient funds for that pur-
pose, and the Supplemental Nutrition Assistance
Program.

“(5) The term ‘funding’ refers to new budget
authority and obligation limits except to the extent
that the funding is provided for entitlement law.

“(6) The term ‘rescind’ means to eliminate or
reduce the amount of enacted funding.

“(7) The terms ‘withhold’ and ‘withholding’
apply to any executive action or inaction that pre-
cludes the obligation of funding at a time when it
would otherwise have been available to an agency for
obligation. The terms do not include administrative
or preparatory actions undertaken prior to obligation
in the normal course of implementing budget laws.
SEC. 1023. TIMING AND PACKAGING OF RESCISSION REQUESTS.

(a) Timing.—If the President proposes that Congress rescind funding under the procedures in this part, OMB shall transmit a message to Congress containing the information specified in section 1024, and the message transmitting the proposal shall be sent to Congress not later than 45 calendar days after the date of enactment of the funding.

(b) Packaging and Transmittal of Requested Rescissions.—Except as provided in subsection (c), for each piece of legislation that provides funding, the President shall request at most 1 package of rescissions and the rescissions in that package shall apply only to funding contained in that legislation. OMB shall deliver each message requesting a package of rescissions to the Secretary of the Senate if the Senate is not in session and to the Clerk of the House of Representatives if the House is not in session. OMB shall make a copy of the transmittal message publicly available, and shall publish in the Federal Register a notice of the message and information on how it can be obtained.

(c) Special Packaging Rules.—After enactment of—

(1) a joint resolution making continuing appropriations;
“(2) a supplemental appropriations bill; or

“(3) an omnibus appropriations bill;

covering some or all of the activities customarily funded in more than 1 regular appropriations bill, the President may propose as many as 2 packages rescinding funding contained in that legislation, each within the 45-day period specified in subsection (a). OMB shall not include the same rescission in both packages, and, if the President requests the rescission of more than one discrete amount of funding under the jurisdiction of a single subcommittee, OMB shall include each of those discrete amounts in the same package.

“SEC. 1024. REQUESTS TO RESCIND FUNDING.

“For each request to rescind funding under this part, the transmittal message shall—

“(1) specify—

“(A) the dollar amount to be rescinded;

“(B) the agency, bureau, and account from which the rescission shall occur;

“(C) the program, project, or activity within the account (if applicable) from which the rescission shall occur;

“(D) the amount of funding, if any, that would remain for the account, program, project,
or activity if the rescission request is enacted; and

“(E) the reasons the President requests the rescission;

“(2) designate each separate rescission request by number; and

“(3) include proposed legislative language to accomplish the requested rescissions which may not include—

“(A) any changes in existing law, other than the rescission of funding; or

“(B) any supplemental appropriations, transfers, or reprogrammings.

“SEC. 1025. GRANTS OF AND LIMITATIONS ON PRESIDENTIAL AUTHORITY.

“(a) Presidential Authority To Withhold Funding.—Notwithstanding any other provision of law and if the President proposes a rescission of funding under this part, OMB may, subject to the time limits provided in subsection (c), temporarily withhold that funding from obligation.

“(b) Expedited Procedures Available Only Once Per Bill.—The President may not invoke the procedures of this part, or the authority to withhold funding
granted by subsection (a), on more than 1 occasion for any Act providing funding.

“(c) **TIME LIMITS.**—OMB shall make available for obligation any funding withheld under subsection (a) on the earliest of—

“(1) the day on which the President determines that the continued withholding or reduction no longer advances the purpose of legislative consideration of the rescission request;

“(2) starting from the day on which OMB transmitted a message to Congress requesting the rescission of funding, 25 calendar days in which the House of Representatives has been in session or 25 calendar days in which the Senate has been in session, whichever occurs second; or

“(3) the last day after which the obligation of the funding in question can no longer be fully accomplished in a prudent manner before its expiration.

“(d) **DEFICIT REDUCTION.**—

“(1) **IN GENERAL.**—Funds that are rescinded under this part shall be dedicated only to reducing the deficit or increasing the surplus.

“(2) **ADJUSTMENT OF LEVELS IN THE CONCURRENT RESOLUTION ON THE BUDGET.**—Not later
than 5 days after the date of enactment of an approval bill as provided under this part, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise allocations and aggregates and other appropriate levels under the appropriate concurrent resolution on the budget to reflect the repeal or cancellation, and the applicable committees shall report revised suballocations pursuant to section 302(b), as appropriate.

``SEC. 1026. CONGRESSIONAL CONSIDERATION OF RESCISSION REQUESTS.

“(a) Preparation of Legislation To Consider a Package of Expedited Rescission Requests.—

“(1) In general.—If the House of Representatives receives a package of expedited rescission requests, the Clerk shall prepare a House bill that only rescinds the amounts requested which shall read as follows:

‘There are enacted the rescissions numbered [insert number or numbers] as set forth in the Presidential message of [insert date] transmitted under part C of the Impoundment Control Act of 1974 as amended.’

“(2) Exclusion Procedure.—The Clerk shall include in the bill each numbered rescission request
listed in the Presidential package in question, except
that the Clerk shall omit a numbered rescission re-
quest if the Chairman of the Committee on the
Budget of the House, after consulting with the
Chairman of the Committee on the Budget of the
Senate, CBO, GAO, and the House and Senate com-
mittees that have jurisdiction over the funding, de-
termines that the numbered rescission does not refer
to funding or includes matter not permitted under a
request to rescind funding.

“(b) INTRODUCTION AND REFERRAL OF LEGISLA-
TION TO ENACT A PACKAGE OF EXPEDITED RESCIS-
sions.—The majority leader or the minority leader of the
House or Representatives, or a designee, shall (by request)
introduce each bill prepared under subsection (a) not later
than 4 days of session of the House after its transmittal,
or, if no such bill is introduced within that period, any
member of the House may introduce the required bill in
the required form on the fifth or sixth day of session of
the House after its transmittal. If such an expedited re-
scission bill is introduced in accordance with the preceding
sentence, it shall be referred to the House committee of
jurisdiction. A copy of the introduced House bill shall be
transmitted to the Secretary of the Senate, who shall pro-
vide it to the Senate committee of jurisdiction.
“(c) House Report and Consideration of Legislation To Enact a Package of Expedited Rescissions.—The House committee of jurisdiction shall report without amendment the bill referred to it under subsection (b) not more than 5 days of session of the House after the referral. The committee may order the bill reported favorably, unfavorably, or without recommendation. If the committee has not reported the bill by the end of the 5-day period, the committee shall be automatically discharged from further consideration of the bill and it shall be placed on the appropriate calendar.

“(d) House Motion To Proceed.—

“(1) In general.—After a bill to enact an expedited rescission package has been reported or the committee of jurisdiction has been discharged under subsection (e), it shall be in order to move to proceed to consider the bill in the House. A Member who wishes to move to proceed to consideration of the bill shall announce that fact, and the motion to proceed shall be in order only during a time designated by the Speaker within the legislative schedule for the next calendar day of legislative session or the one immediately following it.

“(2) Failure to set time.—If the Speaker does not designate a time under paragraph (1),
more calendar days of legislative session after the
bill has been reported or discharged, it shall be in
order for any Member to move to proceed to con-
sider the bill.

“(3) Procedure.—A motion to proceed under
this subsection shall not be in order after the House
has disposed of a prior motion to proceed with re-
spect to that package of expedited rescissions. The
previous question shall be considered as ordered on
the motion to proceed, without intervening motion. A
motion to reconsider the vote by which the motion
to proceed has been disposed of shall not be in
order.

“(4) Removal from calendar.—If 5 cal-
endar days of legislative session have passed since
the bill was reported or discharged under this sub-
section and no Member has made a motion to pro-
ceed, the bill shall be removed from the calendar.

“(e) House Consideration.—

“(1) Considered as read.—A bill consisting
of a package of rescissions under this part shall be
considered as read.

“(2) Points of order.—All points of order
against the bill are waived, except that a point of
order may be made that 1 or more numbered rescis-
sions included in the bill would enact language containing matter not requested by the President or not permitted under this part as part of that package. If the Presiding Officer sustains such a point of order, the numbered rescission or rescissions that would enact such language are deemed to be automatically stripped from the bill and consideration proceeds on the bill as modified.

“(3) Previous Question.—The previous question shall be considered as ordered on the bill to its passage without intervening motion, except that 4 hours of debate equally divided and controlled by a proponent and an opponent are allowed, as well as 1 motion to further limit debate on the bill.

“(4) Motion to Reconsider.—A motion to reconsider the vote on passage of the bill shall not be in order.

“(f) Senate Consideration.—

“(1) Referral.—If the House of Representa-
tives approves a House bill enacting a package of re-
scissions, that bill as passed by the House shall be sent to the Senate and referred to the Senate com-
mittee of jurisdiction.

“(2) Committee Action.—The committee of jurisdiction shall report without amendment the bill
referred to it under this subsection not later than 3
days of session of the Senate after the referral. The
committee may order the bill reported favorably, un-
favorably, or without recommendation.

“(3) DISCHARGE.—If the committee has not re-
ported the bill by the end of the 3-day period, the
committee shall be automatically discharged from
further consideration of the bill and it shall be
placed on the appropriate calendar.

“(4) MOTION TO PROCEED.—On the following
day and for 3 subsequent calendar days in which the
Senate is in session, it shall be in order for any Sen-
ator to move to proceed to consider the bill in the
Senate. Upon such a motion being made, it shall be
deemed to have been agreed to and the motion to re-
consider shall be deemed to have been laid on the
table.

“(5) DEBATE.—Debate on the bill in the Sen-
ate under this subsection, and all debatable motions
and appeals in connection therewith, shall not exceed
10 hours, equally divided and controlled in the usual
form. Debate in the Senate on any debatable motion
or appeal in connection with such a bill shall be lim-
ited to not more than 1 hour, to be equally divided
and controlled in the usual form. A motion to fur-
ther limit debate on such a bill is not debatable.

“(6) MOTIONS NOT IN ORDER.—A motion to
amend such a bill or strike a provision from it is not
in order. A motion to recommit such a bill is not in
order.

“(g) SENATE POINT OF ORDER.—It shall not be in
order under this part for the Senate to consider a bill ap-
proved by the House enacting a package of rescissions
under this part if any numbered rescission in the bill
would enact matter not requested by the President or not
permitted under this Act as part of that package. If a
point of order under this subsection is sustained, the bill
may not be considered under this part.”.

SEC. 1203. TECHNICAL AND CONFORMING AMENDMENTS.

(a) Table of Contents.—Section 1(b) of the Con-
gressional Budget and Impoundment Control Act of 1974
is amended by striking the matter for part C of title X
and inserting the following:

“PART C—EXPEDITED CONSIDERATION OF PROPOSED RESCISSIONS

Sec. 1021. Applicability and disclaimer.
Sec. 1022. Definitions.
Sec. 1023. Timing and packaging of rescission requests.
Sec. 1024. Requests to rescind funding.
Sec. 1025. Grants of and limitations on presidential authority.
Sec. 1026. Congressional consideration of rescission requests.”.

(b) Temporary Withholding.—Section 1013(c) of
the Impoundment Control Act of 1974 is amended by
striking “section 1012” and inserting “section 1012 or section 1025”.

(c) Rulemaking.—

(1) 904(a).—Section 904(a) of the Congressional Budget Act of 1974 is amended by striking “and 1017” and inserting “1017, and 1026”.

(2) 904(d)(1).—Section 904(d)(1) of the Congressional Budget Act of 1974 is amended by striking “1017” and inserting “1017 or 1026”.

SEC. 1204. AMENDMENTS TO PART A OF THE IMPOUNDMENT CONTROL ACT.

(a) In General.—Part A of the Impoundment Control Act of 1974 is amended by inserting at the end the following:

“SEC. 1002. Severability.

“If the judicial branch of the United States finally determines that 1 or more of the provisions of parts B or C violate the Constitution of the United States, the remaining provisions of those parts shall continue in effect.”.

(b) Table of Contents.—Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting at the end of the matter for part A of title X the following:

“Sec. 1002. Severability.”.
SEC. 1205. EXPIRATION.

Part C of the Impoundment Control Act of 1974 (as amended by this Act) shall expire on December 31, 2015.

DIVISION B—TAX REFORM

TITLE I—TAX REFORM FOR FAMILIES AND SMALL BUSINESSES

SEC. 2101. TAX REFORM FOR FAMILIES AND SMALL BUSINESSES.

(a) IN GENERAL.—The Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives shall report legislation that will lower, consolidate, and simplify the individual income tax system, with not more than 3 tax rates, the highest being 25 percent. Such legislation shall be reported not later than 60 days after the date of the enactment of this Act and shall be revenue neutral as scored by the Joint Committee on Taxation using a current policy baseline.

(b) LEGISLATION GOALS.—Such reported legislation shall be required to achieve the following:

(1) REDUCED TAX LIABILITY.—Lower the overall tax burden for the majority of American individual taxpayers.

(2) SIMPLIFICATION.—Close tax loopholes and eliminate frivolous deductions and certain tax cred-
its, at the discretion of each Committee, in order to reduce tax expenditures and simplify the tax code.

(3) CONSOLIDATION.—Provide necessary changes in order to consolidate the individual income tax system consistent with the tax rates specified in subsection (a).

(4) STANDARD DEDUCTION AND PERSONAL EXEMPTIONS.—Revise the amount provided for the standard deduction and personal exemptions in conjunction with the elimination of certain deductions and credits in order to reduce the overall tax liability of the majority of American individual taxpayers.

(c) ADDITIONAL CHANGES.—Such Committees shall include in such legislation any further changes to the individual income tax system in order to ensure tax reductions and simplifications consistent with the goals of this Act.

TITLE II—TAX REFORM FOR EMPLOYERS

SEC. 2201. REDUCTION IN CORPORATE INCOME TAX RATES AND REFORM OF BUSINESS TAX.

(a) IN GENERAL.—The Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives shall report legislation that will lower, consolidate, and simplify the corporate income tax system, with a top tax rate of 25 percent and a consoli-

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tion of the system into 2 tax rates. Such legislation shall be reported not later than 60 days after the date of the enactment of this Act and shall be revenue neutral as scored by the Joint Committee on Taxation using a current policy baseline.

(b) LEGISLATION GOALS.—Such reported legislation shall be required to achieve the following:

(1) REDUCED TAX LIABILITY.—Lower the overall tax rates for American corporations and businesses.

(2) SIMPLIFICATION.—Close tax loopholes and eliminate industry specific deductions and certain tax credits, including the elimination of industry specific taxes, at the discretion of each Committee, in order to reduce tax expenditures and simplify the tax code.

(3) TERRITORIAL TAX SYSTEM.—Establishment of a territorial tax system, including strong incentives to repatriate overseas capital, in lieu of the current worldwide tax system.

(4) CONSOLIDATION.—Provide necessary changes in order to consolidate the corporate income tax system with a total of two tax rates, the top tax rate of 25 percent and a lower tax rate as deter-
mined by the Committees as specified in subsection (a).

(c) ADDITIONAL CHANGES.—Such Committees shall include in such legislation any further changes to the corporate income tax system in order to ensure tax reductions and simplifications consistent with the goals of this Act.

TITLE III—WITHHOLDING TAX RELIEF ACT OF 2011

SEC. 2301. SHORT TITLE.

This title may be cited as the “Withholding Tax Relief Act of 2011”.

SEC. 2302. REPEAL OF IMPOSITION OF WITHHOLDING ON CERTAIN PAYMENTS MADE TO VENDORS BY GOVERNMENT ENTITIES.

The amendment made by section 511 of the Tax Increase Prevention and Reconciliation Act of 2005 is repealed and the Internal Revenue Code of 1986 shall be applied as if such amendment had never been enacted.

SEC. 2303. RESCISSION OF UNSPENT FEDERAL FUNDS TO OFFSET LOSS IN REVENUES.

(a) IN GENERAL.—Notwithstanding any other provision of law, of all available unobligated funds, $39,000,000,000 in appropriated discretionary funds are hereby permanently rescinded.
(b) IMPLEMENTATION.—The Director of the Office of Management and Budget shall determine and identify from which appropriation accounts the rescission under subsection (a) shall apply and the amount of such rescission that shall apply to each such account. Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and Congress of the accounts and amounts determined and identified for rescission under the preceding sentence.

(c) EXCEPTION.—This section shall not apply to the unobligated funds of the Department of Defense or the Department of Veterans Affairs.

DIVISION C—REGULATION REFORM

TITLE I—REPEALING THE JOB-KILLING HEALTH CARE LAW ACT


(a) JOB-KILLING HEALTH CARE LAW.—Effective as of the enactment of Public Law 111–148, such Act is repealed, and the provisions of law amended or repealed by
such Act are restored or revived as if such Act had not been enacted.

(b) **Health Care-Related Provisions in the Health Care and Education Reconciliation Act of 2010.**—Effective as of the enactment of the Health Care and Education Reconciliation Act of 2010 (Public Law 111–152), title I and subtitle B of title II of such Act are repealed, and the provisions of law amended or repealed by such title or subtitle, respectively, are restored or revived as if such title and subtitle had not been enacted.

**SEC. 3102. Budgetary Effects of this Subtitle.**

The budgetary effects of this title, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this title, submitted for printing in the Congressional Record by the Chairman of the Committee on the Budget of the House of Representatives, as long as such statement has been submitted prior to the vote on passage of this title.
TITLE II—MEDICAL CARE ACCESS PROTECTION ACT OF 2011

SEC. 3201. SHORT TITLE.

This title may be cited as the “Medical Care Access Protection Act of 2011” or the “MCAP Act”.

SEC. 3202. FINDINGS AND PURPOSE.

(a) FINDINGS.—

(1) EFFECT ON HEALTH CARE ACCESS AND COSTS.—Congress finds that our current civil justice system is adversely affecting patient access to health care services, better patient care, and cost-efficient health care, in that the health care liability system is a costly and ineffective mechanism for resolving claims of health care liability and compensating injured patients, and is a deterrent to the sharing of information among health care professionals which impedes efforts to improve patient safety and quality of care.

(2) EFFECT ON INTERSTATE COMMERCE.—Congress finds that the health care and insurance industries are industries affecting interstate commerce and the health care liability litigation systems existing throughout the United States are activities that affect interstate commerce by contributing to
the high costs of health care and premiums for health care liability insurance purchased by health care system providers.

(3) Effect on Federal Spending.—Congress finds that the health care liability litigation systems existing throughout the United States have a significant effect on the amount, distribution, and use of Federal funds because of—

(A) the large number of individuals who receive health care benefits under programs operated or financed by the Federal Government;

(B) the large number of individuals who benefit because of the exclusion from Federal taxes of the amounts spent to provide them with health insurance benefits; and

(C) the large number of health care providers who provide items or services for which the Federal Government makes payments.

(b) Purpose.—It is the purpose of this title is to implement reasonable, comprehensive, and effective health care liability reforms designed to—

(1) improve the availability of health care services in cases in which health care liability actions have been shown to be a factor in the decreased availability of services;
(2) reduce the incidence of “defensive medicine” and lower the cost of health care liability insurance, all of which contribute to the escalation of health care costs;

(3) ensure that persons with meritorious health care injury claims receive fair and adequate compensation, including reasonable noneconomic damages;

(4) improve the fairness and cost-effectiveness of our current health care liability system to resolve disputes over, and provide compensation for, health care liability by reducing uncertainty in the amount of compensation provided to injured individuals; and

(5) provide an increased sharing of information in the health care system which will reduce unintended injury and improve patient care.

SEC. 3203. DEFINITIONS.

In this title:

(1) ALTERNATIVE DISPUTE RESOLUTION SYSTEM; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.
(2) CLAIMANT.—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) COLLATERAL SOURCE BENEFITS.—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of
medical, hospital, dental, or income disability benefits; and

(D) any other publicly or privately funded program.

(4) COMPENSATORY DAMAGES.—The term “compensatory damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities, damages for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium (other than loss of domestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature. Such term includes economic damages and noneconomic damages, as such terms are defined in this section.

(5) CONTINGENT FEE.—The term “contingent fee” includes all compensation to any person or per-
sons which is payable only if a recovery is effected
on behalf of one or more claimants.

(6) Economic Damages.—The term “economic
damages” means objectively verifiable monetary
losses incurred as a result of the provision of, use
of, or payment for (or failure to provide, use, or pay
for) health care services or medical products, such as
past and future medical expenses, loss of past and
future earnings, cost of obtaining domestic services,
loss of employment, and loss of business or employ-
ment opportunities.

(7) Health Care Goods or Services.—The
term “health care goods or services” means any
goods or services provided by a health care institu-
tion, provider, or by any individual working under
the supervision of a health care provider, that relates
to the diagnosis, prevention, care, or treatment of
any human disease or impairment, or the assessment
of the health of human beings.

(8) Health Care Institution.—The term
“health care institution” means any entity licensed
under Federal or State law to provide health care
services (including but not limited to ambulatory
surgical centers, assisted living facilities, emergency
medical services providers, hospices, hospitals and
hospital systems, nursing homes, or other entities li-
censed to provide such services).

(9) HEALTH CARE LAWSUIT.—The term “health care lawsuit” means any health care liability
claim concerning the provision of health care goods
or services affecting interstate commerce, or any
health care liability action concerning the provision
of (or the failure to provide) health care goods or
services affecting interstate commerce, brought in a
State or Federal court or pursuant to an alternative
dispute resolution system, against a health care pro-
vider or a health care institution regardless of the
theory of liability on which the claim is based, or the
number of claimants, plaintiffs, defendants, or other
parties, or the number of claims or causes of action,
in which the claimant alleges a health care liability
claim.

(10) HEALTH CARE LIABILITY ACTION.—The
term “health care liability action” means a civil ac-
tion brought in a State or Federal Court or pursu-
ant to an alternative dispute resolution system,
against a health care provider or a health care insti-
tution regardless of the theory of liability on which
the claim is based, or the number of plaintiffs, de-
fendants, or other parties, or the number of causes
of action, in which the claimant alleges a health care liability claim.

(11) Health care liability claim.—The term “health care liability claim” means a demand by any person, whether or not pursuant to ADR, against a health care provider or health care institution, including third-party claims, cross-claims, counter-claims, or contribution claims, which are based upon the provision of, use of, or payment for (or the failure to provide, use, or pay for) health care services, regardless of the theory of liability on which the claim is based, or the number of plaintiffs, defendants, or other parties, or the number of causes of action.

(12) Health care provider.—

(A) In general.—The term “health care provider” means any person (including but not limited to a physician (as defined by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)), registered nurse, dentist, podiatrist, pharmacist, chiropractor, or optometrist) required by State or Federal law to be licensed, registered, or certified to provide health care services, and being either so licensed, reg-
istered, or certified, or exempted from such re-

quirement by other statute or regulation.

(B) TREATMENT OF CERTAIN PROFESSIONAL ASSOCIATIONS.—For purposes of this Act, a professional association that is organized under State law by an individual physician or group of physicians, a partnership or limited li-
ability partnership formed by a group of physi-
cians, a nonprofit health corporation certified under State law, or a company formed by a group of physicians under State law shall be treated as a health care provider under sub-
paragraph (A).

(13) MALICIOUS INTENT TO INJURE.—The term “malicious intent to injure” means inten-
tionally causing or attempting to cause physical in-
jury other than providing health care goods or serv-
ices.

(14) NONECONOMIC DAMAGES.—The term “noneconomic damages” means damages for phys-
ical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and compan-
ionship, loss of consortium (other than loss of do-
mestic service), hedonic damages, injury to reputa-
tion, and all other nonpecuniary losses of any kind or nature.

(15) **PUNITIVE DAMAGES.**—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider or health care institution. Punitive damages are neither economic nor noneconomic damages.

(16) **RECOVERY.**—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(17) **STATE.**—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.
SEC. 3204. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

(a) In General.—Except as otherwise provided for in this section, the time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through the use of reasonable diligence should have discovered, the injury, whichever occurs first.

(b) General Exception.—The time for the commencement of a health care lawsuit shall not exceed 3 years after the date of manifestation of injury unless the tolling of time was delayed as a result of—

(1) fraud;

(2) intentional concealment; or

(3) the presence of a foreign body, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person.

(c) Minors.—An action by a minor shall be commenced within 3 years from the date of the alleged manifestation of injury except that if such minor is under the full age of 6 years, such action shall be commenced within 3 years of the manifestation of injury, or prior to the eighth birthday of the minor, whichever provides a longer period. Such time limitation shall be tolled for minors for any period during which a parent or guardian and a health care provider or health care institution have committed
fraud or collusion in the failure to bring an action on behalf of the injured minor.

(d) Rule 11 Sanctions.—Whenever a Federal or State court determines (whether by motion of the parties or whether on the motion of the court) that there has been a violation of Rule 11 of the Federal Rules of Civil Procedure (or a similar violation of applicable State court rules) in a health care liability action to which this Act applies, the court shall impose upon the attorneys, law firms, or pro se litigants that have violated Rule 11 or are responsible for the violation, an appropriate sanction, which shall include an order to pay the other party or parties for the reasonable expenses incurred as a direct result of the filing of the pleading, motion, or other paper that is the subject of the violation, including a reasonable attorneys’ fee. Such sanction shall be sufficient to deter repetition of such conduct or comparable conduct by others similarly situated, and to compensate the party or parties injured by such conduct.

Sec. 3205. Compensating Patient Injury.

(a) Unlimited Amount of Damages for Actual Economic Losses in Health Care Lawsuits.—In any health care lawsuit, nothing in this Act shall limit the recovery by a claimant of the full amount of the available
economic damages, notwithstanding the limitation con-
tained in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—

(1) HEALTH CARE PROVIDERS.—In any health care lawsuit where final judgment is rendered
against a health care provider, the amount of non-
economic damages recovered from the provider, if
otherwise available under applicable Federal or State
law, may be as much as $250,000, regardless of the
number of parties other than a health care institu-
tion against whom the action is brought or the num-
ber of separate claims or actions brought with re-
spect to the same occurrence.

(2) HEALTH CARE INSTITUTIONS.—

(A) SINGLE INSTITUTION.—In any health care lawsuit where final judgment is rendered
against a single health care institution, the
amount of noneconomic damages recovered
from the institution, if otherwise available
under applicable Federal or State law, may be
as much as $250,000, regardless of the number
of parties against whom the action is brought
or the number of separate claims or actions
brought with respect to the same occurrence.
(B) MULTIPLE INSTITUTIONS.—In any health care lawsuit where final judgment is rendered against more than one health care institution, the amount of noneconomic damages recovered from each institution, if otherwise available under applicable Federal or State law, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same occurrence, except that the total amount recovered from all such institutions in such lawsuit shall not exceed $500,000.

(c) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—In any health care lawsuit—

(1) an award for future noneconomic damages shall not be discounted to present value;

(2) the jury shall not be informed about the maximum award for noneconomic damages under subsection (b);

(3) an award for noneconomic damages in excess of the limitations provided for in subsection (b) shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before
accounting for any other reduction in damages required by law; and

(4) if separate awards are rendered for past and future noneconomic damages and the combined awards exceed the limitations described in subsection (b), the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. A separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

SEC. 3206. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—

(1) IN GENERAL.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the
amount of damages awarded that are actually paid to claimants.

(2) Contingency fees.—

(A) In general.—In any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity.

(B) Limitation.—The total of all contingent fees for representing all claimants in a health care lawsuit shall not exceed the following limits:

(i) Forty percent of the first $50,000 recovered by the claimant(s).

(ii) Thirty-three and one-third percent of the next $50,000 recovered by the claimant(s).

(iii) Twenty-five percent of the next $500,000 recovered by the claimant(s).

(iv) Fifteen percent of any amount by which the recovery by the claimant(s) is in excess of $600,000.
(b) **Applicability.**—

(1) **In general.**—The limitations in subsection (a) shall apply whether the recovery is by judgment, settlement, mediation, arbitration, or any other form of alternative dispute resolution.

(2) **Minors.**—In a health care lawsuit involving a minor or incompetent person, a court retains the authority to authorize or approve a fee that is less than the maximum permitted under this section.

c) **Expert Witnesses.**—

(1) **Requirement.**—No individual shall be qualified to testify as an expert witness concerning issues of negligence in any health care lawsuit against a defendant unless such individual—

(A) except as required under paragraph (2), is a health care professional who—

(i) is appropriately credentialed or licensed in 1 or more States to deliver health care services; and

(ii) typically treats the diagnosis or condition or provides the type of treatment under review; and

(B) can demonstrate by competent evidence that, as a result of training, education, knowledge, and experience in the evaluation, di-
agnosis, and treatment of the disease or injury which is the subject matter of the lawsuit against the defendant, the individual was substantially familiar with applicable standards of care and practice as they relate to the act or omission which is the subject of the lawsuit on the date of the incident.

(2) PHYSICIAN REVIEW.—In a health care lawsuit, if the claim of the plaintiff involved treatment that is recommended or provided by a physician (allopathic or osteopathic), an individual shall not be qualified to be an expert witness under this subsection with respect to issues of negligence concerning such treatment unless such individual is a physician.

(3) SPECIALTIES AND SUBSPECIALTIES.—With respect to a lawsuit described in paragraph (1), a court shall not permit an expert in one medical specialty or subspecialty to testify against a defendant in another medical specialty or subspecialty unless, in addition to a showing of substantial familiarity in accordance with paragraph (1)(B), there is a showing that the standards of care and practice in the two specialty or subspecialty fields are similar.
(4) LIMITATION.—The limitations in this subsection shall not apply to expert witnesses testifying as to the degree or permanency of medical or physical impairment.

SEC. 3207. ADDITIONAL HEALTH BENEFITS.

(a) IN GENERAL.—The amount of any damages received by a claimant in any health care lawsuit shall be reduced by the court by the amount of any collateral source benefits to which the claimant is entitled, less any insurance premiums or other payments made by the claimant (or by the spouse, parent, child, or legal guardian of the claimant) to obtain or secure such benefits.

(b) PRESERVATION OF CURRENT LAW.—Where a payor of collateral source benefits has a right of recovery by reimbursement or subrogation and such right is permitted under Federal or State law, subsection (a) shall not apply.

(c) APPLICATION OF PROVISION.—This section shall apply to any health care lawsuit that is settled or resolved by a fact finder.

SEC. 3208. PUNITIVE DAMAGES.

(a) PUNITIVE DAMAGES PERMITTED.—

(1) IN GENERAL.—Punitive damages may, if otherwise available under applicable State or Federal law, be awarded against any person in a health care
lawsuit only if it is proven by clear and convincing
evidence that such person acted with malicious in-
tent to injure the claimant, or that such person de-
liberately failed to avoid unnecessary injury that
such person knew the claimant was substantially
certain to suffer.

(2) FILING OF LAWSUIT.—No demand for puni-
tive damages shall be included in a health care law-
suit as initially filed. A court may allow a claimant
to file an amended pleading for punitive damages
only upon a motion by the claimant and after a find-
ing by the court, upon review of supporting and op-
posing affidavits or after a hearing, after weighing
the evidence, that the claimant has established by a
substantial probability that the claimant will prevail
on the claim for punitive damages.

(3) SEPARATE PROCEEDING.—At the request of
any party in a health care lawsuit, the trier of fact
shall consider in a separate proceeding—

(A) whether punitive damages are to be
awarded and the amount of such award; and

(B) the amount of punitive damages fol-
lowing a determination of punitive liability.

If a separate proceeding is requested, evidence rel-
evant only to the claim for punitive damages, as de-
terminated by applicable State law, shall be inadmis-
sible in any proceeding to determine whether com-
pensatory damages are to be awarded.

(4) LIMITATION WHERE NO COMPENSATORY DAMAGES ARE AWARDED.—In any health care law-
suit where no judgment for compensatory damages
is rendered against a person, no punitive damages
may be awarded with respect to the claim in such
lawsuit against such person.

(b) DETERMINING AMOUNT OF PUNITIVE DAM-
AGES.—

(1) FACTORS CONSIDERED.—In determining
the amount of punitive damages under this section,
the trier of fact shall consider only the following:

(A) the severity of the harm caused by the
conduct of such party;

(B) the duration of the conduct or any
concealment of it by such party;

(C) the profitability of the conduct to such
party;

(D) the number of products sold or med-
ical procedures rendered for compensation, as
the case may be, by such party, of the kind
causing the harm complained of by the claim-
ant;
(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages awarded in a health care lawsuit may not exceed an amount equal to two times the amount of economic damages awarded in the lawsuit or $250,000, whichever is greater. The jury shall not be informed of the limitation under the preceding sentence.

(c) LIABILITY OF HEALTH CARE PROVIDERS.—

(1) IN GENERAL.—A health care provider who prescribes, or who dispenses pursuant to a prescription, a drug, biological product, or medical device approved by the Food and Drug Administration, for an approved indication of the drug, biological product, or medical device, shall not be named as a party to a product liability lawsuit invoking such drug, biological product, or medical device and shall not be liable to a claimant in a class action lawsuit against the manufacturer, distributor, or product seller of such drug, biological product, or medical device.
(2) MEDICAL PRODUCT.—The term “medical product” means a drug or device intended for humans. The terms “drug” and “device” have the meanings given such terms in sections 201(g)(1) and 201(h) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321), respectively, including any component or raw material used therein, but excluding health care services.

SEC. 3209. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) IN GENERAL.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments in accordance with the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) APPLICABILITY.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this Act.
SEC. 3210. EFFECT ON OTHER LAWS.

(a) General Vaccine Injury.—

(1) In general.—To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this Act in conflict with a rule of law of such title XXI shall not apply to such action.

(2) Exception.—If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(b) Smallpox Vaccine Injury.—

(1) In general.—To the extent that part C of title II of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a smallpox vaccine-related injury or death—

(A) this Act shall not affect the application of the rule of law to such an action; and
(B) any rule of law prescribed by this Act in conflict with a rule of law of such part C shall not apply to such action.

(2) EXCEPTION.—If there is an aspect of a civil action brought for a smallpox vaccine-related injury or death to which a Federal rule of law under part C of title II of the Public Health Service Act does not apply, then this Act or otherwise applicable law (as determined under this Act) will apply to such aspect of such action.

(c) Other Federal Law.—Except as provided in this section, nothing in this Act shall be deemed to affect any defense available, or any limitation on liability that applies to, a defendant in a health care lawsuit or action under any other provision of Federal law.

SEC. 3211. STATE FLEXIBILITY AND PROTECTION OF STATES' RIGHTS.

(a) Health Care Lawsuits.—The provisions governing health care lawsuits set forth in this Act shall preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this Act. The provisions governing health care lawsuits set forth in this Act supersede chapter 171 of title 28, United States Code, to the extent that such chapter—
(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this Act; or

(2) prohibits the introduction of evidence regarding collateral source benefits.

(b) Preemption of Certain State Laws.—No provision of this Act shall be construed to preempt any State law (whether effective before, on, or after the date of the enactment of this Act) that specifies a particular monetary amount of compensatory or punitive damages (or the total amount of damages) that may be awarded in a health care lawsuit, regardless of whether such monetary amount is greater or lesser than is provided for under this Act, notwithstanding section 5(a).

(c) Protection of State’s Rights and Other Laws.—

(1) In General.—Any issue that is not governed by a provision of law established by or under this Act (including the State standards of negligence) shall be governed by otherwise applicable Federal or State law.

(2) Rule of Construction.—Nothing in this Act shall be construed to—
(A) preempt or supersede any Federal or State law that imposes greater procedural or substantive protections (such as a shorter statute of limitations) for a health care provider or health care institution from liability, loss, or damages than those provided by this Act;

(B) preempt or supercede any State law that permits and provides for the enforcement of any arbitration agreement related to a health care liability claim whether enacted prior to or after the date of enactment of this Act;

(C) create a cause of action that is not otherwise available under Federal or State law; or

(D) affect the scope of preemption of any other Federal law.

SEC. 3212. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit brought in a Federal or State court, or subject to an alternative dispute resolution system, that is initiated on or after the date of the enactment of this Act, except that any health care lawsuit arising from an injury occurring prior to the date of enactment of this title shall be governed by the applicable statute of limitations provisions in effect at the time the injury occurred.
TITLE III—FINANCIAL TAKEOVER REPEAL

SEC. 3301. REPEAL.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203) is repealed, and the provisions of law amended by such Act are revived or restored as if such Act had not been enacted.

TITLE IV—REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY (REINS ACT)

SEC. 3401. SHORT TITLE.

This title may be cited as "REINS Act".

SEC. 3402. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Section 1 of article I of the United States Constitution grants all legislative powers to Congress.

(2) Over time, Congress has excessively delegated its constitutional charge while failing to conduct appropriate oversight and retain accountability for the content of the laws it passes.

(3) By requiring a vote in Congress, this Act will result in more carefully drafted and detailed legislation, an improved regulatory process, and a legislative branch that is truly accountable to the people
of the United States for the laws imposed upon them.

(b) PURPOSE.—The purpose of this Act is to increase accountability for and transparency in the Federal regulatory process.

SEC. 3403. CONGRESSIONAL REVIEW OF AGENCY RULEMAKING.

Chapter 8 of title 5, United States Code, is amended to read as follows:

"CHAPTER 8—CONGRESSIONAL REVIEW OF AGENCY RULEMAKING"

§ 801. Congressional review

"(a)(1)(A) Before a rule may take effect, the Federal agency promulgating such rule shall submit to each House of the Congress and to the Comptroller General a report containing—

"(i) a copy of the rule;

"(ii) a concise general statement relating to the rule;

"(iii) a classification of the rule as a major or nonmajor rule, including an explanation of the clas-
sification specifically addressing each criteria for a
major rule contained within sections 804(2)(A),
804(2)(B), and 804(2)(C);
“(iv) a list of any other related regulatory ac-
tions intended to implement the same statutory pro-
vision or regulatory objective as well as the indi-
vidual and aggregate economic effects of those ac-
tions; and
“(v) the proposed effective date of the rule.
“(B) On the date of the submission of the report
under subparagraph (A), the Federal agency promulgating
the rule shall submit to the Comptroller General and make
available to each House of Congress—
“(i) a complete copy of the cost-benefit analysis
of the rule, if any;
“(ii) the agency’s actions pursuant to title 5 of
the United States Code, sections 603, 604, 605,
607, and 609;
“(iii) the agency’s actions pursuant to title 2 of
the United States Code, sections 1532, 1533, 1534,
and 1535; and
“(iv) any other relevant information or require-
ments under any other Act and any relevant Execu-
tive orders.
“(C) Upon receipt of a report submitted under sub-
paragraph (A), each House shall provide copies of the re-
port to the chairman and ranking member of each stand-
ing committee with jurisdiction under the rules of the
House of Representatives or the Senate to report a bill
to amend the provision of law under which the rule is
issued.

“(2)(A) The Comptroller General shall provide a re-
port on each major rule to the committees of jurisdiction
by the end of 15 calendar days after the submission or
publication date as provided in section 802(b)(2). The re-
port of the Comptroller General shall include an assess-
ment of the agency’s compliance with procedural steps re-
quired by paragraph (1)(B).

“(B) Federal agencies shall cooperate with the Com-
troller General by providing information relevant to the
Comptroller General’s report under subparagraph (A).

“(3) A major rule relating to a report submitted
under paragraph (1) shall take effect upon enactment of
a joint resolution of approval described in section 802 or
as provided for in the rule following enactment of a joint
resolution of approval described in section 802, whichever
is later.
“(4) A nonmajor rule shall take effect as provided by section 803 after submission to Congress under paragraph (1).

“(5) If a joint resolution of approval relating to a major rule is not enacted within the period provided in subsection (b)(2), then a joint resolution of approval relating to the same rule may not be considered under this chapter in the same Congress by either the House of Representatives or the Senate.

“(b)(1) A major rule shall not take effect unless the Congress enacts a joint resolution of approval described under section 802.

“(2) If a joint resolution described in subsection (a) is not enacted into law by the end of 70 session days or legislative days, as applicable, beginning on the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), then the rule described in that resolution shall be deemed not to be approved and such rule shall not take effect.

“(c)(1) Notwithstanding any other provision of this section (except subject to paragraph (3)), a major rule may take effect for one 90-calendar-day period if the President makes a determination under paragraph (2) and
submits written notice of such determination to the Congress.

“(2) Paragraph (1) applies to a determination made by the President by Executive order that the major rule should take effect because such rule is—

“(A) necessary because of an imminent threat to health or safety or other emergency;

“(B) necessary for the enforcement of criminal laws;

“(C) necessary for national security; or

“(D) issued pursuant to any statute implementing an international trade agreement.

“(3) An exercise by the President of the authority under this subsection shall have no effect on the procedures under section 802.

“(d)(1) In addition to the opportunity for review otherwise provided under this chapter, in the case of any rule for which a report was submitted in accordance with subsection (a)(1)(A) during the period beginning on the date occurring—

“(A) in the case of the Senate, 60 session days, or

“(B) in the case of the House of Representatives, 60 legislative days,
before the date the Congress is scheduled to adjourn a
session of Congress through the date on which the same
or succeeding Congress first convenes its next session, sec-
tions 802 and 803 shall apply to such rule in the suc-
ceeding session of Congress.

“(2)(A) In applying sections 802 and 803 for pur-
poses of such additional review, a rule described under
paragraph (1) shall be treated as though—

“(i) such rule were published in the Federal
Register on—

“(I) in the case of the Senate, the 15th
session day, or

“(II) in the case of the House of Rep-
resentatives, the 15th legislative day,

after the succeeding session of Congress first con-
venes; and

“(ii) a report on such rule were submitted to
Congress under subsection (a)(1) on such date.

“(B) Nothing in this paragraph shall be construed
to affect the requirement under subsection (a)(1) that a
report shall be submitted to Congress before a rule can
take effect.

“(3) A rule described under paragraph (1) shall take
effect as otherwise provided by law (including other sub-
sections of this section).
§ 802. Congressional approval procedure for major rules

“(a) For purposes of this section, the term ‘joint resolution’ means only a joint resolution introduced on or after the date on which the report referred to in section 801(a)(1)(A) is received by Congress (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: ‘That Congress approves the rule submitted by the ___ relating to ___.’ (The blank spaces being appropriately filled in).

“(1) In the House, the majority leader of the House of Representatives (or his designee) and the minority leader of the House of Representatives (or his designee) shall introduce such joint resolution described in subsection (a) (by request), within 3 legislative days after Congress receives the report referred to in section 801(a)(1)(A).

“(2) In the Senate, the majority leader of the Senate (or his designee) and the minority leader of the Senate (or his designee) shall introduce such joint resolution described in subsection (a) (by request), within 3 session days after Congress receives the report referred to in section 801(a)(1)(A).

“(b)(1) A joint resolution described in subsection (a) shall be referred to the committees in each House of Con-
gress with jurisdiction under the rules of the House of Representatives or the Senate to report a bill to amend the provision of law under which the rule is issued.

“(2) For purposes of this section, the term ‘submission date’ means the date on which the Congress receives the report submitted under section 801(a)(1).

“(c) In the Senate, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 session days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th session day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

“(d)(1) In the Senate, when the committee or committees to which a joint resolution is referred have reported, or when a committee or committees are discharged (under subsection (c)) from further consideration of a joint resolution described in subsection (a), it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for a motion
to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the joint resolution shall remain the unfinished business of the Senate until disposed of.

“(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the
Senate, the vote on final passage of the joint resolution shall occur.

“(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

“(e)(1) In the House of Representatives, if the committee or committees to which a joint resolution described in subsection (a) has been referred have not reported it at the end of 15 legislative days after its introduction, such committee or committees shall be automatically discharged from further consideration of the resolution and it shall be placed on the appropriate calendar. A vote on final passage of the resolution shall be taken on or before the close of the 15th legislative day after the resolution is reported by the committee or committees to which it was referred, or after such committee or committees have been discharged from further consideration of the resolution.

“(2)(A) A motion in the House of Representatives to proceed to the consideration of a resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.
“(B) Debate in the House of Representatives on a resolution shall be limited to not more than two hours, which shall be divided equally between those favoring and those opposing the resolution. A motion to further limit debate shall not be debatable. No amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to reconsider the vote by which a resolution is agreed to or disagreed to.

“(C) Motions to postpone, made in the House of Representatives with respect to the consideration of a resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

“(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a resolution shall be decided without debate.

“(f) If, before the passage by one House of a joint resolution of that House described in subsection (a), that House receives from the other House a joint resolution described in subsection (a), then the following procedures shall apply with respect to a joint resolution described in subsection (a) of the House receiving the joint resolution—
“(1) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

“(2) the vote on final passage shall be on the joint resolution of the other House.

“(g) The enactment of a resolution of approval does not serve as a grant or modification of statutory authority by Congress for the promulgation of a rule, does not extinguish or affect any claim, whether substantive or procedural, against any alleged defect in a rule, and shall not form part of the record before the court in any judicial proceeding concerning a rule.

“(h) This section and section 803 are enacted by Congress—

“(1) as an exercise of the rulemaking power of the Senate and House of Representatives, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of a joint resolution described in subsection (a), and it supersedes other rules only to the extent that it is inconsistent with such rules; and

“(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time,
in the same manner, and to the same extent as in
the case of any other rule of that House.

“§ 803. Congressional disapproval procedure for
nonmajor rules

“(a) For purposes of this section, the term ‘joint res-
olution’ means only a joint resolution introduced in the
period beginning on the date on which the report referred
to in section 801(a)(1)(A) is received by Congress and
ending 60 days thereafter (excluding days either House
of Congress is adjourned for more than 3 days during a
session of Congress), the matter after the resolving clause
of which is as follows: ‘That Congress disapproves the
nonmajor rule submitted by the __ __ relating to __ __,
and such rule shall have no force or effect.’ (The blank
spaces being appropriately filled in).

“(b)(1) A joint resolution described in subsection (a)
shall be referred to the committees in each House of Con-
gress with jurisdiction.

“(2) For purposes of this section, the term ‘submis-
sion or publication date’ means the later of the date on
which—

“(A) the Congress receives the report submitted
under section 801(a)(1); or

“(B) the nonmajor rule is published in the Fed-
eral Register, if so published.
“(c) In the Senate, if the committee to which is re-
ferred a joint resolution described in subsection (a) has
not reported such joint resolution (or an identical joint
resolution) at the end of 15 session days after the date
of introduction of the joint resolution, such committee may
be discharged from further consideration of such joint res-
olution upon a petition supported in writing by 30 Mem-
bers of the Senate, and such joint resolution shall be
placed on the calendar.

“(d)(1) In the Senate, when the committee to which
a joint resolution is referred has reported, or when a com-
mittee is discharged (under subsection (c)) from further
consideration of a joint resolution described in subsection
(a), it is at any time thereafter in order (even though a
previous motion to the same effect has been disagreed to)
for a motion to proceed to the consideration of the joint
resolution, and all points of order against the joint resolu-
tion (and against consideration of the joint resolution) are
waived. The motion is not subject to amendment, or to
a motion to postpone, or to a motion to proceed to the
consideration of other business. A motion to reconsider the
vote by which the motion is agreed to or disagreed to shall
not be in order. If a motion to proceed to the considera-
tion of the joint resolution is agreed to, the joint resolution
shall remain the unfinished business of the Senate until disposed of.

“(2) In the Senate, debate on the joint resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to further limit debate is in order and not debatable. An amendment to, or a motion to postpone, or a motion to proceed to the consideration of other business, or a motion to recommit the joint resolution is not in order.

“(3) In the Senate, immediately following the conclusion of the debate on a joint resolution described in subsection (a), and a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, the vote on final passage of the joint resolution shall occur.

“(4) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

“(e) In the Senate the procedure specified in subsection (e) or (d) shall not apply to the consideration of a joint resolution respecting a nonmajor rule—
“(1) after the expiration of the 60 session days
beginning with the applicable submission or publica-
tion date, or
“(2) if the report under section 801(a)(1)(A)
was submitted during the period referred to in sec-
tion 801(d)(1), after the expiration of the 60 session
days beginning on the 15th session day after the
succeeding session of Congress first convenes.
“(f) If, before the passage by one House of a joint
resolution of that House described in subsection (a), that
House receives from the other House a joint resolution
described in subsection (a), then the following procedures
shall apply:
“(1) The joint resolution of the other House
shall not be referred to a committee.
“(2) With respect to a joint resolution described
in subsection (a) of the House receiving the joint
resolution—
“(A) the procedure in that House shall be
the same as if no joint resolution had been re-
ceived from the other House; but
“(B) the vote on final passage shall be on
the joint resolution of the other House.
§ 804. Definitions
“For purposes of this chapter—
“(1) the term ‘Federal agency’ means any agency as that term is defined in section 551(1);

“(2) the term ‘major rule’ means any rule, including an interim final rule, that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in—

“(A) an annual effect on the economy of $100,000,000 or more;

“(B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

“(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets;

“(3) the term ‘nonmajor rule’ means any rule that is not a major rule; and

“(4) the term ‘rule’ has the meaning given such term in section 551, except that such term does not include—

“(A) any rule of particular applicability, including a rule that approves or prescribes for
the future rates, wages, prices, services, or al-
lowances therefore, corporate or financial struc-
tures, reorganizations, mergers, or acquisitions
thereof, or accounting practices or disclosures
bearing on any of the foregoing;

“(B) any rule relating to agency manage-
ment or personnel; or

“(C) any rule of agency organization, pro-
cedure, or practice that does not substantially
affect the rights or obligations of non-agency
parties.

“§ 805. Judicial review

“(a) No determination, finding, action, or omission
under this chapter shall be subject to judicial review.

“(b) Notwithstanding subsection (a), a court may de-
determine whether a Federal agency has completed the nec-
essary requirements under this chapter for a rule to take
effect.

“§ 806. Exemption for monetary policy

“Nothing in this chapter shall apply to rules that con-
cern monetary policy proposed or implemented by the
Board of Governors of the Federal Reserve System or the
Federal Open Market Committee.

“§ 807. Effective date of certain rules

“Notwithstanding section 801—
“(1) any rule that establishes, modifies, opens, closes, or conducts a regulatory program for a commercial, recreational, or subsistence activity related to hunting, fishing, or camping; or

“(2) any rule other than a major rule which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest,

shall take effect at such time as the Federal agency promulgating the rule determines.”

TITLE V—REGULATION MORATORIUM AND JOBS PRESERVATION ACT

SEC. 3501. SHORT TITLE.

This title may be cited as the “Regulation Moratorium and Jobs Preservation Act”.

SEC. 3502. DEFINITIONS.

In this title—

(1) the term “agency” has the meaning given under section 3502(1) of title 44, United States Code;

(2) the term “regulatory action” means any substantive action by an agency that promulgates or
is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking;

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

(A) have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, small entities, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

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

(D) raise novel legal or policy issues; and

(4) the term “small entities” has the meaning given under section 601(6) of title 5, United States Code.
SEC. 3503. SIGNIFICANT REGULATORY ACTIONS.

(a) In General.—No agency may take any significant regulatory action, until the Bureau of Labor Statistics average of monthly unemployment rates for any quarter beginning after the date of enactment of this Act is equal to or less than 7.7 percent.

(b) Determination.—The Secretary of Labor shall submit a report to the Director of the Office of Management and Budget whenever the Secretary determines that the Bureau of Labor Statistics average of monthly unemployment rates for any quarter beginning after the date of enactment of this Act is equal to or less than 7.7 percent.

SEC. 3504. WAIVERS.

(a) National Security or National Emergency.—The President may waive the application of section 3 to any significant regulatory action, if the President—

(1) determines that the waiver is necessary on the basis of national security or a national emergency; and

(2) submits notification to Congress of that waiver and the reasons for that waiver.

(b) Additional Waivers.—
(1) Submission.—The President may submit a request to Congress for a waiver of the application of section 3 to any significant regulatory action.

(2) Contents.—A submission under this subsection shall include—

(A) an identification of the significant regulatory action; and

(B) the reasons which necessitate a waiver for that significant regulatory action.

(3) Congressional Action.—Congress shall give expeditious consideration and take appropriate legislative action with respect to any waiver request submitted under this subsection.

SEC. 3505. JUDICIAL REVIEW.

(a) Definition.—In this section, the term “small business” means any business, including an unincorporated business or a sole proprietorship, that employs not more than 500 employees or that has a net worth of less than $7,000,000 on the date a civil action arising under this Act is filed.

(b) Review.—Any person that is adversely affected or aggrieved by any significant regulatory action in violation of this Act is entitled to judicial review in accordance with chapter 7 of title 5, United States Code.
(c) Jurisdiction.—Each court having jurisdiction to review any significant regulatory action for compliance with any other provision of law shall have jurisdiction to review all claims under this Act.

(d) Relief.—In granting any relief in any civil action under this section, the court shall order the agency to take corrective action consistent with this Act and chapter 7 of title 5, United States Code, including remanding the significant regulatory action to the agency and enjoining the application or enforcement of that significant regulatory action, unless the court finds by a preponderance of the evidence that application or enforcement is required to protect against an imminent and serious threat to the national security from persons or states engaged in hostile or military activities against the United States.

(e) Reasonable Attorney Fees for Small Businesses.—The court shall award reasonable attorney fees and costs to a substantially prevailing small business in any civil action arising under this Act. A party qualifies as substantially prevailing even without obtaining a final judgment in its favor if the agency changes its position as a result of the civil action.

(f) Limitation on Commencing Civil Action.—A person may seek and obtain judicial review during the 1-year period beginning on the date of the challenged
agency action or within 90 days after an enforcement ac-

tion or notice thereof, except that where another provision

of law requires that a civil action be commenced before

the expiration of that 1-year period, such lesser period

shall apply.

TITLE VI—FREEDOM FROM RE-

STRICTIVE EXCESSIVE EXEC-

UTIVE DEMANDS AND ONER-

OUS MANDATES ACT OF 2011

SEC. 3601. SHORT TITLE.

This title may be cited as the “Freedom from Restric-
tive Excessive Executive Demands and Onerous Mandates

Act of 2011”.

SEC. 3602. FINDINGS.

Congress finds the following:

(1) A vibrant and growing small business sector

is critical to the recovery of the economy of the

United States.

(2) Regulations designed for application to

large-scale entities have been applied uniformly to

small businesses and other small entities, sometimes

inhibiting the ability of small entities to create new

jobs.

(3) Uniform Federal regulatory and reporting

requirements in many instances have imposed on
small businesses and other small entities unnecessary and disproportionately burdensome demands, including legal, accounting, and consulting costs, thereby threatening the viability of small entities and the ability of small entities to compete and create new jobs in a global marketplace.

(4) Since 1980, Federal agencies have been required to recognize and take account of the differences in the scale and resources of regulated entities, but in many instances have failed to do so.

(5) In 2009, there were nearly 70,000 pages in the Federal Register, and, according to research by the Office of Advocacy of the Small Business Administration, the annual cost of Federal regulations totals $1,750,000,000,000. Small firms bear a disproportionate burden, paying approximately 36 percent more per employee than larger firms in annual regulatory compliance costs.

(6) All agencies in the Federal Government should fully consider the costs, including indirect economic impacts and the potential for job loss, of proposed rules, periodically review existing regulations to determine their impact on small entities, and repeal regulations that are unnecessarily duplicative or have outlived their stated purpose.
(7) It is the intention of Congress to amend chapter 6 of title 5, United States Code, to ensure that all impacts, including foreseeable indirect effects, of proposed and final rules are considered by agencies during the rulemaking process and that the agencies assess a full range of alternatives that will limit adverse economic consequences, enhance economic benefits, and fully address potential job loss.

SEC. 3603. INCLUDING INDIRECT ECONOMIC IMPACT IN SMALL ENTITY ANALYSES.

Section 601 of title 5, United States Code, is amended by adding at the end the following:

“(9) the term ‘economic impact’ means, with respect to a proposed or final rule—

“(A) the economic effects on small entities directly regulated by the rule; and

“(B) the reasonably foreseeable economic effects of the rule on small entities that—

“(i) purchase products or services from, sell products or services to, or otherwise conduct business with entities directly regulated by the rule;

“(ii) are directly regulated by other governmental entities as a result of the rule; or
“(iii) are not directly regulated by the agency as a result of the rule but are otherwise subject to other agency regulations as a result of the rule.”.

SEC. 3604. JUDICIAL REVIEW TO ALLOW SMALL ENTITIES TO CHALLENGE PROPOSED REGULATIONS.

Section 611(a) of title 5, United States Code, is amended—

(1) in paragraph (1), by inserting “603,” after “601,”;

(2) in paragraph (2), by inserting “603,” after “601,”;

(3) by striking paragraph (3) and inserting the following:

“(3) A small entity may seek such review during the 1-year period beginning on the date of final agency action, except that—

“(A) if a provision of law requires that an action challenging a final agency action be commenced before the expiration of 1 year, the lesser period shall apply to an action for judicial review under this section; and

“(B) in the case of noncompliance with section 603 or 605(b), a small entity may seek judicial re-
view of agency compliance with such section before
the close of the public comment period.”; and

(4) in paragraph (4)—

(A) in subparagraph (A), by striking ‘‘,
and’’ and inserting a semicolon;

(B) in subparagraph (B), by striking the
period and inserting ‘‘; or’’; and

(C) by adding at the end the following:

“(C) issuing an injunction prohibiting an agen-

ce from taking any agency action with respect to a
rulemaking until that agency is in compliance with
the requirements of section 603 or 605.”.

SEC. 3605. PERIODIC REVIEW.

Section 610 of title 5, United States Code, is amend-
ed to read as follows:

“§ 610. Periodic review of rules

“(a)(1) Not later than 180 days after the date of en-
actment of the Freedom from Restrictive Excessive Execu-
tive Demands and Onerous Mandates Act of 2011, each
agency shall establish a plan for the periodic review of—

“(A) each rule issued by the agency that the
head of the agency determines has a significant eco-

nomic impact on a substantial number of small enti-
ties, without regard to whether the agency per-
formed an analysis under section 604 with respect to the rule; and

“(B) any small entity compliance guide required to be published by the agency under section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note).

“(2) In reviewing rules and small entity compliance guides under paragraph (1), the agency shall determine whether the rules and guides should—

“(A) be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant adverse economic impacts on a substantial number of small entities (including an estimate of any adverse impacts on job creation and employment by small entities); or

“(B) continue in effect without change.

“(3) Each agency shall publish the plan established under paragraph (1) in the Federal Register and on the Web site of the agency.

“(4) An agency may amend the plan established under paragraph (1) at any time by publishing the amendment in the Federal Register and on the Web site of the agency.

“(b) Each plan established under subsection (a) shall provide for—
“(1) the review of each rule and small entity compliance guide described in subsection (a)(1) in effect on the date of enactment of the Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011—

“(A) not later than 9 years after the date of publication of the plan in the Federal Register; and

“(B) every 9 years thereafter; and

“(2) the review of each rule adopted and small entity compliance guide described in subsection (a)(1) that is published after the date of enactment of the Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011—

“(A) not later than 9 years after the publication of the final rule in the Federal Register; and

“(B) every 9 years thereafter.

“(c) In reviewing rules under the plan required under subsection (a), the agency shall consider—

“(1) the continued need for the rule;

“(2) the nature of complaints received by the agency from small entities concerning the rule;
“(3) comments by the Regulatory Enforcement Ombudsman and the Chief Counsel for Advocacy of the Small Business Administration;

“(4) the complexity of the rule;

“(5) the extent to which the rule overlaps, duplicates, or conflicts with other Federal rules and, unless the head of the agency determines it to be infeasible, State and local rules;

“(6) the contribution of the rule to the cumulative economic impact of all Federal rules on the class of small entities affected by the rule, unless the head of the agency determines that such a calculation cannot be made;

“(7) the length of time since the rule has been evaluated, or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule; and

“(8) the economic impact of the rule, including—

“(A) the estimated number of small entities to which the rule will apply;

“(B) the estimated number of small entity jobs that will be lost or created due to the rule; and
“(C) the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including—

“(i) an estimate of the classes of small entities that will be subject to the require-
ment; and

“(ii) the type of professional skills necessary for preparation of the report or record.

“(d)(1) Each agency shall submit an annual report regarding the results of the review required under sub-
section (a) to—

“(A) Congress; and

“(B) in the case of an agency that is not an independent regulatory agency (as defined in section 3502(5) of title 44), the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget.

“(2) Each report required under paragraph (1) shall include a description of any rule or guide with respect to which the agency made a determination of infeasibility under paragraph (5) or (6) of subsection (c), together with a detailed explanation of the reasons for the determina-
“(e) Each agency shall publish in the Federal Register and on the Web site of the agency a list of the rules and small entity compliance guides to be reviewed under the plan required under subsection (a) that includes—

“(1) a brief description of each rule or guide;

“(2) for each rule, the reason why the head of the agency determined that the rule has a significant economic impact on a substantial number of small entities (without regard to whether the agency had prepared a final regulatory flexibility analysis for the rule); and

“(3) a request for comments from the public, the Chief Counsel for Advocacy of the Small Business Administration, and the Regulatory Enforcement Ombudsman concerning the enforcement of the rules or publication of the guides.

“(f)(1) Not later than 6 months after each date described in subsection (b)(1), the Inspector General for each agency shall—

“(A) determine whether the agency has conducted the review required under subsection (b) appropriately; and

“(B) notify the head of the agency of—

“(i) the results of the determination under subparagraph (A); and
“(ii) any issues preventing the Inspector General from determining that the agency has conducted the review under subsection (b) appropriately.

“(2)(A) Not later than 6 months after the date on which the head of an agency receives a notice under paragraph (1)(B) that the agency has not conducted the review under subsection (b) appropriately, the agency shall address the issues identified in the notice.

“(B) Not later than 30 days after the last day of the 6-month period described in subparagraph (A), the Inspector General for an agency that receives a notice described in subparagraph (A) shall—

“(i) determine whether the agency has addressed the issues identified in the notice; and

“(ii) notify Congress if the Inspector General determines that the agency has not addressed the issues identified in the notice; and

“(C) Not later than 30 days after the date on which the Inspector General for an agency transmits a notice under subparagraph (B)(ii), an amount equal to 1 percent of the amount appropriated for the fiscal year to the appropriations account of the agency that is used to pay salaries shall be rescinded.
“(D) Nothing in this paragraph may be construed to prevent Congress from acting to prevent a rescission under subparagraph (C).”.

SEC. 3606. REQUIRING SMALL BUSINESS REVIEW PANELS FOR ADDITIONAL AGENCIES.

(a) AGENCIES.—Section 609 of title 5, United States Code, is amended—

(1) in subsection (b)—

(A) by striking “a covered agency” the first place it appears and inserting “an agency designated under subsection (d)”;

and

(B) by striking “a covered agency” each place it appears and inserting “the agency”;

(2) by striking subsection (d), as amended by section 1100G(a) of Public Law 111–203 (124 Stat. 2112), and inserting the following:

“(d)(1)(A) On and after the date of enactment of the Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011, the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor shall be—

“(i) agencies designated under this subsection; and
“(ii) subject to the requirements of subsection (b).

“(B) On and after the designated transfer date established under section 1062 of Public Law 111–203 (12 U.S.C. 5582), the Bureau of Consumer Financial Protection shall be—

“(i) an agency designated under this subsection;

and

“(ii) subject to the requirements of subsection (b).

“(2) The Chief Counsel for Advocacy shall designate as agencies that shall be subject to the requirements of subsection (b) on and after the date of the designation—

“(A) 3 agencies for the first year after the date of enactment of the Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011;

“(B) in addition to the agencies designated under subparagraph (A), 3 agencies for the second year after the date of enactment of the Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011; and

“(C) in addition to the agencies designated under subparagraphs (A) and (B), 3 agencies for the third year after the date of enactment of the Free-
dom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011.

“(3) The Chief Counsel for Advocacy shall designate agencies under paragraph (2) based on the economic impact of the rules of the agency on small entities, beginning with agencies with the largest economic impact on small entities.”; and

(3) in subsection (e)(1), by striking “the covered agency” and inserting “the agency”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION 603.—Section 603(d) of title 5, United States Code, as added by section 1100G(b) of Public Law 111–203 (124 Stat. 2112), is amended—

(A) in paragraph (1), by striking “a covered agency, as defined in section 609(d)(2)” and inserting “the Bureau of Consumer Financial Protection”; and

(B) in paragraph (2), by striking “A covered agency, as defined in section 609(d)(2),” and inserting “The Bureau of Consumer Financial Protection”.

(2) SECTION 604.—Section 604(a) of title 5, United States Code, is amended—
(A) by redesignating the second paragraph
designated as paragraph (6) (relating to cov-
ered agencies), as added by section 1100G(c)(3)
of Public Law 111–203 (124 Stat. 2113), as
paragraph (7); and

(B) in paragraph (7), as so redesignated—

(i) by striking “a covered agency, as
defined in section 609(d)(2)” and inserting
“the Bureau of Consumer Financial Pro-
tection”; and

(ii) by striking “the agency” and in-
serting “the Bureau”.

(3) EFFECTIVE DATE.—The amendments made
by this subsection shall take effect on the date of en-
ectment of this Act and apply on and after the des-
ignated transfer date established under section 1062

SEC. 3607. EXPANDING THE REGULATORY FLEXIBILITY ACT
TO AGENCY GUIDANCE DOCUMENTS.

Section 601(2) of title 5, United States Code, is
amended by inserting after “public comment” the fol-
lowing: “and any significant guidance document, as de-
defined in the Office of Management and Budget Final Bul-
3432; January 25, 2007)”. 
SEC. 3608. REQUIRING THE INTERNAL REVENUE SERVICE TO CONSIDER SMALL ENTITY IMPACT.

(a) In General.—Section 603(a) of title 5, United States Code, is amended, in the fifth sentence, by striking “but only” and all that follows through the period at the end and inserting “but only to the extent that such interpretative rules, or the statutes upon which such rules are based, impose on small entities a collection of information requirement or a recordkeeping requirement.”.

(b) Definitions.—Section 601 of title 5, United States Code, as amended by section 3 of this Act, is amended—

(1) in paragraph (6), by striking “and” at the end; and

(2) by striking paragraphs (7) and (8) and inserting the following:

“(7) the term ‘collection of information’ has the meaning given that term in section 3502(3) of title 44;

“(8) the term ‘recordkeeping requirement’ has the meaning given that term in section 3502(13) of title 44; and”.
SEC. 3609. REPORTING ON ENFORCEMENT ACTIONS RELATING TO SMALL ENTITIES.

Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note) is amended—

(1) in subsection (a)—

(A) by striking “Each agency” and inserting the following:

“(1) Establishment of policy or program.—Each agency”; and

(B) by adding at the end the following:

“(2) Review of civil penalties.—Not later than 2 years after the date of enactment of the Freedom from Restrictive Excessive Executive Demands and Onerous Mandates Act of 2011, and every 2 years thereafter, each agency regulating the activities of small entities shall review the civil penalties imposed by the agency for violations of a statutory or regulatory requirement by a small entity to determine whether a reduction or waiver of the civil penalties is appropriate.”; and

(2) in subsection (c)—

(A) by striking “Agencies shall report” and all that follows through “the scope” and inserting “Not later than 2 years after the date of enactment of the Freedom from Restrictive
Excessive Executive Demands and Onerous Mandates Act of 2011, and every 2 years thereafter, each agency shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Small Business and the Committee on the Judiciary of the House of Representatives a report discussing the scope”; and

(B) by striking “and the total amount of penalty reductions and waivers” and inserting “the total amount of penalty reductions and waivers, and the results of the most recent review under subsection (a)(2)’’.

SEC. 3610. REQUIRING MORE DETAILED SMALL ENTITY ANALYSES.

(a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—

Section 603 of title 5, United States Code, as amended by section 1100G(b) of Public Law 111–203 (124 Stat. 2112), is amended—

(1) by striking subsection (b) and inserting the following:

“(b) Each initial regulatory flexibility analysis required under this section shall contain a detailed statement—
“(1) describing the reasons why action by the agency is being considered;

“(2) describing the objectives of, and legal basis for, the proposed rule;

“(3) estimating the number and type of small entities to which the proposed rule will apply;

“(4) describing the projected reporting, record-keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report and record;

“(5) describing all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule, or the reasons why such a description could not be provided; and

“(6) estimating the additional cumulative economic impact of the proposed rule on small entities, including job loss by small entities, beyond that already imposed on the class of small entities by the agency, or the reasons why such an estimate is not available.”; and

(2) by adding at the end the following:

“(e) An agency shall notify the Chief Counsel for Advocacy of the Small Business Administration of any draft
rules that may have a significant economic impact on a
substantial number of small entities—

“(1) when the agency submits a draft rule to
the Office of Information and Regulatory Affairs of
the Office of Management and Budget under Executive Order 12866, if that order requires the submis-

(2) if no submission to the Office of Informa-
tion and Regulatory Affairs is required—

“(A) a reasonable period before publication
of the rule by the agency; and

“(B) in any event, not later than 3 months
before the date on which the agency publishes
the rule.”.

(b) Final Regulatory Flexibility Analysis.—

(1) In general.—Section 604(a) of title 5,
United States Code, is amended—

(A) by inserting “detailed” before “de-
scription” each place it appears;

(B) in paragraph (2)—

(i) by inserting “detailed” before
“statement” each place it appears; and

(ii) by inserting “(or certification of
the proposed rule under section 605(b))”
after “initial regulatory flexibility analysis”; 

(C) in paragraph (4), by striking “an explanation” and inserting “a detailed explanation”; and 

(D) in paragraph (6) (relating to a description of steps taken to minimize significant economic impact), as added by section 1601 of the Small Business Jobs Act of 2010 (Public Law 111–240; 124 Stat. 2251), by inserting “detailed” before “statement”.

(2) Publication of analysis on web site, etc.—Section 604(b) of title 5, United States Code, is amended to read as follows:

“(b) The agency shall—

“(1) make copies of the final regulatory flexibility analysis available to the public, including by publishing the entire final regulatory flexibility analysis on the Web site of the agency; and 

“(2) publish in the Federal Register the final regulatory flexibility analysis, or a summary of the analysis that includes the telephone number, mailing address, and address of the Web site where the complete final regulatory flexibility analysis may be obtained.”.
(c) Cross-References to Other Analyses.—
Section 605(a) of title 5, United States Code, is amended to read as follows:

“(a) A Federal agency shall be deemed to have satisfied a requirement regarding the content of a regulatory flexibility agenda or regulatory flexibility analysis under section 602, 603, or 604, if the Federal agency provides in the agenda or regulatory flexibility analysis a cross-reference to the specific portion of an agenda or analysis that is required by another law and that satisfies the requirement under section 602, 603, or 604.”.

(d) Certifications.—Section 605(b) of title 5, United States Code, is amended, in the second sentence, by striking “statement providing the factual” and inserting “detailed statement providing the factual and legal”.

(e) Quantification Requirements.—Section 607 of title 5, United States Code, is amended to read as follows:

“§ 607. Quantification requirements

“In complying with sections 603 and 604, an agency shall provide—

“(1) a quantifiable or numerical description of the effects of the proposed or final rule, including an estimate of the potential for job loss, and alternatives to the proposed or final rule; or
“(2) a more general descriptive statement regarding the potential for job loss and a detailed statement explaining why quantification under paragraph (1) is not practicable or reliable.”.

SEC. 3611. ENSURING THAT AGENCIES CONSIDER SMALL ENTITY IMPACT DURING THE RULEMAKING PROCESS.

Section 605(b) of title 5, United States Code, is amended—

(1) by inserting “(1)” after “(b)”; and

(2) by adding at the end the following:

“(2) If, after publication of the certification required under paragraph (1), the head of the agency determines that there will be a significant economic impact on a substantial number of small entities, the agency shall comply with the requirements of section 603 before the publication of the final rule, by—

“(A) publishing an initial regulatory flexibility analysis for public comment; or

“(B) re-proposing the rule with an initial regulatory flexibility analysis.

“(3) The head of an agency may not make a certification relating to a rule under this subsection, unless the head of the agency has determined—
“(A) the average cost of the rule for small entities affected or reasonably presumed to be affected by the rule;

“(B) the number of small entities affected or reasonably presumed to be affected by the rule; and

“(C) the number of affected small entities for which that cost will be significant.

“(4) Before publishing a certification and a statement providing the factual basis for the certification under paragraph (1), the head of an agency shall—

“(A) transmit a copy of the certification and statement to the Chief Counsel for Advocacy of the Small Business Administration; and

“(B) consult with the Chief Counsel for Advocacy of the Small Business Administration on the accuracy of the certification and statement.”.

SEC. 3612. ADDITIONAL POWERS OF THE OFFICE OF ADVOCACY.

Section 203 of Public Law 94–305 (15 U.S.C. 634c) is amended—

(1) in paragraph (5), by striking “and” at the end;

(2) in paragraph (6), by striking the period at the end and inserting “; and”; and
(3) by inserting after paragraph (6) the following:

“(7) at the discretion of the Chief Counsel for Advocacy, comment on regulatory action by an agency that affects small businesses, without regard to whether the agency is required to file a notice of proposed rulemaking under section 553 of title 5, United States Code, with respect to the action.”.

SEC. 3613. FUNDING AND OFFSETS.

(a) Authorization.—There are authorized to be appropriated to the Small Business Administration, for any costs of carrying out this Act and the amendments made by this Act (including the costs of hiring additional employees)—

(1) $1,000,000 for fiscal year 2012;

(2) $2,000,000 for fiscal year 2013; and

(3) $3,000,000 for fiscal year 2014.

(b) Repeals.—In order to offset the costs of carrying out this Act and the amendments made by this Act and to reduce the Federal deficit, the following provisions of law are repealed, effective on the date of enactment of this Act:


(3) Section 1203(c) of the Energy Security and Efficiency Act of 2007 (15 U.S.C. 657h(c)).

SEC. 3614. TECHNICAL AND CONFORMING AMENDMENTS.

(a) HEADING.—Section 605 of title 5, United States Code, is amended in the section heading by striking “Avoidance” and all that follows and inserting the following: “Incorporations by reference and certification.”.

(b) TABLE OF SECTIONS.—The table of sections for chapter 6 of title 5, United States Code, is amended—

(1) by striking the item relating to section 605 and inserting the following:

“605. Incorporations by reference and certifications.”;

and

(2) by striking the item relating to section 607 inserting the following:

“607. Quantification requirements.”.

TITLE VII—UNFUNDED MANDATES ACCOUNTABILITY ACT

SEC. 3701. SHORT TITLE.

This title may be cited as the “Unfunded Mandates Accountability Act”.

SEC. 3702. FINDINGS.

Congress finds the following:
(1) The public has a right to know the benefits and costs of regulation. Effective regulatory programs provide important benefits to the public, including protecting the environment, worker safety, and human health. Regulations also impose significant costs on individuals, employers, State, local, and tribal governments, diverting resources from other important priorities.

(2) Better regulatory analysis and review should improve the quality of agency decisions, increasing the benefits and reducing unwarranted costs of regulation.

(3) Disclosure and scrutiny of key information underlying agency decisions should make Government more accountable to the public it serves.

SEC. 3703. REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.

(a) Regulatory Impact Analyses for Certain Rules.—Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) is amended—

(1) by striking the section heading and inserting the following:
“SEC. 202. REGULATORY IMPACT ANALYSES FOR CERTAIN RULES.”;

(2) by redesignating subsections (b) and (c) as subsections (d) and (e), respectively;

(3) by striking subsection (a) and inserting the following:

“(a) DEFINITION.—In this section, the term ‘cost’ means the cost of compliance and any reasonably foreseeable indirect costs, including revenues lost as a result of an agency rule subject to this section.

“(b) IN GENERAL.—Before promulgating any proposed or final rule that may have an annual effect on the economy of $100,000,000 or more (adjusted for inflation), or that may result in the expenditure by State, local, and tribal governments, in the aggregate, of $100,000,000 or more (adjusted for inflation) in any 1 year, each agency shall prepare and publish in the Federal Register an initial and final regulatory impact analysis. The initial regulatory impact analysis shall accompany the agency’s notice of proposed rulemaking and shall be open to public comment. The final regulatory impact analysis shall accompany the final rule.

“(c) CONTENT.—The initial and final regulatory impact analysis under subsection (b) shall include—
“(1)(A) an analysis of the anticipated benefits and costs of the rule, which shall be quantified to the extent feasible;

“(B) an analysis of the benefits and costs of a reasonable number of regulatory alternatives within the range of the agency’s discretion under the statute authorizing the rule, including alternatives that—

“(i) require no action by the Federal Government; and

“(ii) use incentives and market-based means to encourage the desired behavior, provide information upon which choices can be made by the public, or employ other flexible regulatory options that permit the greatest flexibility in achieving the objectives of the statutory provision authorizing the rule; and

“(C) an explanation that the rule meets the requirements of section 205;

“(2) an assessment of the extent to which—

“(A) the costs to State, local and tribal governments may be paid with Federal financial assistance (or otherwise paid for by the Federal Government); and
“(B) there are available Federal resources
to carry out the rule;
“(3) estimates of—
“(A) any disproportionate budgetary ef-
fects of the rule upon any particular regions of
the Nation or particular State, local, or tribal
governments, urban or rural or other types of
communities, or particular segments of the pri-
ivate sector; and
“(B) the effect of the rule on job creation
or job loss, which shall be quantified to the ex-
tent feasible; and
“(4)(A) a description of the extent of the agen-
cy’s prior consultation with elected representatives
(under section 204) of the affected State, local, and
tribal governments;
“(B) a summary of the comments and concerns
that were presented by State, local, or tribal govern-
ments either orally or in writing to the agency; and
“(C) a summary of the agency’s evaluation of
those comments and concerns.”;
(4) in subsection (d) (as redesignated by para-
graph (2) of this subsection), by striking “subsection
(a)” and inserting “subsection (b)”;}
(5) in subsection (e) (as redesignated by paragraph (2) of this subsection), by striking “subsection (a)” each place that term appears and inserting “subsection (b)”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of sections for the Unfunded Mandates Reform Act of 1995 is amended by striking the item relating to section 202 and inserting the following:

“Sec. 202. Regulatory impact analyses for certain rules.”.

SEC. 3704. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

Section 205 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1535) is amended by striking section 205 and inserting the following:

“SEC. 205. LEAST BURDENSOME OPTION OR EXPLANATION REQUIRED.

“Before promulgating any proposed or final rule for which a regulatory impact analysis is required under section 202, the agency shall—

“(1) identify and consider a reasonable number of regulatory alternatives within the range of the agency’s discretion under the statute authorizing the rule, including alternatives required under section 202(b)(1)(B); and

“(2) from the alternatives described under paragraph (1), select the least costly, most cost-eff-
effective, or least burdensome alternative that achieves
the objectives of the statute.”.

SEC. 3705. INCLUSION OF APPLICATION TO INDEPENDENT
REGULATORY AGENCIES.

(a) In General.—Section 421(1) of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 658(1)) is amended by striking “, but does not in-
clude independent regulatory agencies”.

(b) Exemption for Monetary Policy.—The Un-
funded Mandates Reform Act of 1995 (2 U.S.C. 1501 et
seq.) is amended by inserting after section 5 the following:

“SEC. 6. EXEMPTION FOR MONETARY POLICY.

“Nothing in title II, III, or IV shall apply to rules
that concern monetary policy proposed or implemented by
the Board of Governors of the Federal Reserve System
or the Federal Open Market Committee.”.

SEC. 3706. JUDICIAL REVIEW.

The Unfunded Mandates Reform Act of 1995 is
amended by striking section 401 (2 U.S.C. 1571) and in-
serting the following:

“SEC. 401. JUDICIAL REVIEW.

“(a) In General.—For any rule subject to section
202, a party aggrieved by final agency action is entitled
to judicial review of an agency’s analysis under and com-
pliance with sections 202 (b) and (c)(1) and 205. The
scope of review shall be governed by chapter 7 of title 5, United States Code.

“(b) JURISDICTION.—Each court having jurisdiction to review a rule subject to section 202 for compliance with section 553 of title 5, United States Code, or under any other provision of law, shall have jurisdiction to review any claims brought under subsection (a) of this section.

“(c) RELIEF AVAILABLE.—In granting relief in an action under this section, the court shall order the agency to take remedial action consistent with chapter 7 of title 5, United States Code, including remand and vacatur of the rule.”.

SEC. 3707. EFFECTIVE DATE.

This title shall take effect 90 days after the date of enactment of this title.

TITLE VIII—GOVERNMENT LITIGATION SAVINGS ACT

SEC. 3801. SHORT TITLE.

This title may be cited as the “Government Litigation Savings Act”.

SEC. 3802. MODIFICATION OF EQUAL ACCESS TO JUSTICE PROVISIONS.

(a) AGENCY PROCEEDINGS.—
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(1) Eligibility parties; attorney fees.—

Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by inserting after "prevailing party” the following: “who has a direct and personal monetary interest in the adjudication, including because of personal injury, property damage, or unpaid agency disbursement,”; and

(B) in subsection (b)(1)—

(i) in subparagraph (A)(ii), by striking “$125 per hour” and all that follows through “a higher fee” and inserting “$175 per hour”; and

(ii) in subparagraph (B), by striking “; except that” and all that follows through “section 601”.

(2) Reduction or denial of awards.—Section 504(a)(3) of title 5, United States Code, is amended in the first sentence—

(A) by striking “may reduce the amount to be awarded, or deny an award,” and inserting “shall reduce the amount to be awarded, or deny an award, commensurate with pro bono hours and related fees and expenses, or”;

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(B) by striking “unduly and”; and

(C) by striking “controversy.” and inserting “controversy or acted in an obdurate, dilatory, mendacious, or oppressive manner, or in bad faith.”.

(3) LIMITATION ON AWARDS.—Section 504(a) of title 5, United States Code, is amended by adding at the end the following:

“(5) A party may not receive an award of fees and other expenses under this section—

“(A) in excess of $200,000 in any single adversary adjudication, or

“(B) for more than 3 adversary adjudications initiated in the same calendar year,

unless the adjudicative officer of the agency determines that an award exceeding such limits is required to avoid severe and unjust harm to the prevailing party.”.

(4) REPORTING IN AGENCY ADJUDICATIONS.—

Section 504 of such title is amended—

(A) in subsection (c)(1), by striking “,

United States Code”; and

(B) by striking subsection (e) and inserting the following:

“(e)(1) The Chairman of the Administrative Conference of the United States shall issue an annual, online
report to the Congress on the amount of fees and other expenses awarded during the preceding fiscal year pursuant to this section. The report shall describe the number, nature, and amount of the awards, the nature of and claims involved in each controversy (including the law under which the controversy arose), and any other relevant information that may aid the Congress in evaluating the scope and impact of such awards. The report shall be made available to the public online, and contain a searchable database of the total awards given, and the total number of applications for the award of fees and other expenses that were filed, defended, and heard, and shall include, with respect to each such application, the following:

“(A) The name of the party seeking the award of fees and other expenses.

“(B) The agency to which the application for the award was made.

“(C) The names of the administrative law judges in the adversary adjudication that is the subject of the application.

“(D) The disposition of the application, including any appeal of action taken on the application.

“(E) The amount of each award.

“(F) The hourly rates of expert witnesses stated in the application that was awarded.
“(G) With respect to each award of fees and other expenses, the basis for the finding that the position of the agency concerned was not substantially justified.

“(2)(A) The report under paragraph (1) shall cover payments of fees and other expenses under this section that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is otherwise subject to nondisclosure provisions.

“(B) The disclosure of fees and other expenses required under subparagraph (A) does not affect any other information that is subject to nondisclosure provisions in the settlement agreement.”.

(5) ADJUSTMENT OF ATTORNEY FEES.—Section 504 of such title is amended by adding at the end the following:

“(g) The Director of the Office of Management and Budget may adjust the maximum hourly fee set forth in subsection (b)(1)(A)(ii) for the fiscal year beginning October 1, 2012, and for each fiscal year thereafter, to reflect changes in the Consumer Price Index, as determined by the Secretary of Labor.”.

(b) COURT CASES.—
(1) Eligibility parties; attorney fees;

Limitation on awards.—Section 2412(d) of title 28, United States Code, is amended—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking “in any civil ac-

tion” and all that follows through “ju-

risdiction of that action” and insert-

ing “in the civil action”; and

(II) by striking “shall award to a

prevailing party other than the United States” and inserting the following: “,
in any civil action (other than cases
sounding in tort), including pro-
ceedings for judicial review of agency
action, brought by or against the
United States in any court having ju-
risdiction of that action, shall award
to a prevailing party who has a direct
and personal monetary interest in the
civil action, including because of per-
sonal injury, property damage, or un-
paid agency disbursement, other than
the United States,”; and
(ii) by adding at the end the following:

“(E) An individual or entity may not receive an award of fees and other expenses under this subsection in excess of—

“(i) $200,000 in any single civil action, or

“(ii) for more than 3 civil actions initiated in the same calendar year,

unless the presiding judge determines that an award exceeding such limits is required to avoid severe and unjust harm to the prevailing party.”; and

(B) in paragraph (2)—

(i) in subparagraph (A)(ii), by striking “$125 per hour” and all that follows through “a higher fee” and inserting “$175 per hour”; and

(ii) in subparagraph (B), by striking “; except that” and all that follows through “section 601”.

(2) REDUCTION OR DENIAL OF AWARDS.—Section 2412(d)(1)(C) of title 28, United States Code, is amended—

(A) by striking “, in its discretion, may re-duce the amount to be awarded pursuant to this subsection, or deny an award,” and insert-
ing "shall reduce the amount to be awarded under this subsection, or deny an award, com-
mensurate with pro bono hours and related fees and expenses, or";

(B) by striking "unduly and"; and

(C) by striking "controversy." and insert-
ing "controversy or acted in an obdurate, dil-
tory, mendacious, or oppressive manner, or in bad faith."

(3) ADJUSTMENT OF ATTORNEY FEES.—Sec-
tion 2412(d) of title 28, United States Code, is
amended by adding at the end the following:

"(5) The Director of the Office of Management and
Budget may adjust the maximum hourly fee set forth in
paragraph (2)(A)(ii) for the fiscal year beginning October
1, 2012, and for each fiscal year thereafter, to reflect
changes in the Consumer Price Index, as determined by
the Secretary of Labor."

(4) REPORTING.—Section 2412(d) of title 28,
United States Code, is further amended by adding
at the end the following:

"(6)(A) The Chairman of the Administrative Con-
ference of the United States shall issue an annual, online
report to the Congress on the amount of fees and other
expenses awarded during the preceding fiscal year pursu-
ant to this subsection. The report shall describe the num-
ber, nature, and amount of the awards, the nature of and
claims involved in each controversy (including the law
under which the controversy arose), and any other relevant
information that may aid the Congress in evaluating the
scope and impact of such awards. The report shall be
made available to the public online and shall contain a
searchable database of total awards given and the total
number of cases filed, defended, or heard, and shall in-
clude with respect to each such case the following:

“(i) The name of the party seeking the award
of fees and other expenses in the case.

“(ii) The district court hearing the case.

“(iii) The names of the presiding judges in the
case.

“(iv) The agency involved in the case.

“(v) The disposition of the application for fees
and other expenses, including any appeal of action
taken on the application.

“(vi) The amount of each award.

“(vii) The hourly rates of expert witnesses stat-
ed in the application that was awarded.

“(viii) With respect to each award of fees and
other expenses, the basis for the finding that the po-
sition of the agency concerned was not substantially justified.

“(B)(i) The report under subparagraph (A) shall cover payments of fees and other expenses under this subsection that are made pursuant to a settlement agreement, regardless of whether the settlement agreement is otherwise subject to nondisclosure provisions.

“(ii) The disclosure of fees and other expenses required under clause (i) does not affect any other information that is subject to nondisclosure provisions in the settlement agreement.

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

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

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

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

“(D) The Attorney General of the United States shall provide to the Chairman of the Administrative Conference of the United States such information as the Chairman requests to carry out this paragraph.”.
(c) Effective Date.—

(1) Modifications to Procedures.—The amendments made by—

(A) paragraphs (1), (2), and (3) of subsection (a) shall apply with respect to adversary adjudications commenced on or after the date of the enactment of this Act; and

(B) paragraphs (1) and (2) of subsection (b) shall apply with respect to civil actions commenced on or after such date of enactment.

(2) Reporting.—The amendments made by paragraphs (4) and (5) of subsection (a) and by paragraphs (3) and (4) of subsection (b) shall take effect on the date of the enactment of this Act.

SEC. 3803. GAO Study.

Not later than 30 days after the date of the enactment of this Act, the Comptroller General shall commence an audit of the implementation of the Equal Access to Justice Act for the years 1995 through the end of the calendar year in which this Act is enacted. The Comptroller General shall, not later than 1 year after the end of the calendar year in which this Act is enacted, complete such audit and submit to the Congress a report on the results of the audit.
TITLE IX—EMPLOYMENT
PROTECTION ACT OF 2011

SEC. 3901. SHORT TITLE.

This title may be cited as the “Employment Protection Act of 2011”.

SEC. 3902. IMPACTS OF EPA REGULATORY ACTIVITY ON EMPLOYMENT AND ECONOMIC ACTIVITY.

(a) DEFINITIONS.—In this section:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) DE MINIMIS NEGATIVE IMPACT.—The term “de minimis negative impact” means—

(A) with respect to employment levels, a loss of more than 100 jobs, subject to the condition that any offsetting job gains that result from the hypothetical creation of new jobs through new technologies or government employment may not be used to offset the job loss calculation; and

(B) with respect to economic activity, a decrease in economic activity of more than $1,000,000 during any calendar year, subject to the condition that any offsetting economic activity that results from the hypothetical creation
of new economic activity through new technologies or government employment may not be used in the economic activity calculation.

(b) **Analysis of Impacts of Actions on Employment and Economic Activity.**—

(1) **Analysis.**—Prior to promulgating any regulation or other requirement, issuing any policy statement, guidance document, or endangerment finding, implementing any new or substantially altered program, or denying any permit, the Administrator shall analyze the impact on employment levels and economic activity, disaggregated by State, of the regulation, requirement, policy statement, guidance document, endangerment finding, program, or permit denial.

(2) **Economic Models.**—

(A) **In General.**—In carrying out paragraph (1), the Administrator shall use the best available economic models.

(B) **Annual GAO Report.**—Not later than December 31, 2011, and annually thereafter, the Comptroller General of the United States shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infra-
structure of the House of Representatives a report on the economic models used by the Administrator to carry out this subsection.

(3) **Availability of Information.**—With respect to any regulation, requirement, policy statement, guidance document, endangerment finding, program, or permit denial, the Administrator shall—

(A) post the analysis under paragraph (1) as a link on the main page of the public Internet website of the Environmental Protection Agency; and

(B) request that the Governor of any State experiencing more than a de minimis negative impact post the analysis in the Capitol of the State.

(4) **Clean Water Act and Other Permits.**—Each analysis under paragraph (1) shall include a description of estimated job losses and decreased economic activity due to the denial of a permit, including any permit denied under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(c) **Public Hearings.**—

(1) **In General.**—If the Administrator concludes under subsection (b)(1) that a regulation, requirement, policy statement, guidance document,
endangerment finding, program, or permit denial will have more than a de minimis negative impact on employment levels or economic activity in a State, the Administrator shall hold a public hearing in each such State not less than—

(A) 30 days before the effective date of the regulation, requirement, policy statement, guidance document, endangerment finding, or program; or

(B) 48 hours before the denial of a permit.

(2) TIME, LOCATION, AND SELECTION.—

(A) IN GENERAL.—A public hearing required by paragraph (1) shall be held at a convenient time and location for impacted residents.

(B) LOCATION.—In selecting a location for a public hearing under subparagraph (A), the Administrator shall give priority to locations in the State that will experience the greatest number of job losses.

(3) CITIZEN SUITS.—

(A) IN GENERAL.—If a public hearing is required by paragraph (1) with respect to any State, and the Administrator fails to hold such a public hearing in accordance with paragraphs
(1) and (2), any resident of the State may bring an action in any United States district court in the State to compel compliance by the Administrator.

(B) RELIEF.—If a resident prevails in an action against the Administrator under subparagraph (A), the United States district court—

(i) shall enjoin the regulation, requirement, policy statement, guidance document, endangerment finding, program, or permit denial that is the subject of the action; and

(ii) may award reasonable attorneys’ fees and costs.

(C) APPEAL.—On appeal of an injunction issued under subparagraph (B)(i), a United States court of appeals—

(i) shall require the submission of briefs not later than 30 days after the date of filing of the appeal;

(ii) may not stay the injunction prior to hearing oral arguments; and
(iii) shall make a final decision not later than 90 days after the date of filing of the appeal.

(d) NOTIFICATION.—If the Administrator concludes under subsection (b)(1) that a regulation, requirement, policy statement, guidance document, endangerment finding, program, or permit denial will have more than a de minimis negative impact on employment levels or economic activity in any State, the Administrator shall provide a notice of the de minimis negative impact to the congressional delegation, Governor, and legislature of the affected State not later than—

(1) 45 days before the effective date of the regulation, requirement, policy statement, guidance document, endangerment finding, requirement, or program; or

(2) 7 days before the denial of the permit.

TITLE X—FARM DUST

REGULATION PREVENTION ACT

SEC. 3931. SHORT TITLE.

This title may be cited as the “Farm Dust Regulation Prevention Act”.

SEC. 3932. NUISANCE DUST.

Part A of title I of the Clean Air Act (42 U.S.C. 7401 et seq.) is amended by adding at the end the following:
SEC. 132. REGULATION OF NUISANCE DUST PRIMARILY BY
STATE, TRIBAL, AND LOCAL GOVERNMENTS.

“(a) Definition of Nuisance Dust.—In this section, the term ‘nuisance dust’ means particulate matter—

“(1) generated from natural sources, unpaved roads, agricultural activities, earth moving, or other activities typically conducted in rural areas; or

“(2) consisting primarily of soil, windblown dust, or other natural or biological materials, or some combination of those materials.

“(b) Applicability.—Except as provided in subsection (c), this Act does not apply to, and references in this Act to particulate matter are deemed to exclude, nuisance dust.

“(c) Exception.—Subsection (b) does not apply with respect to any geographical area in which nuisance dust is not regulated under State, tribal, or local law to the extent that the Administrator finds that—

“(1) nuisance dust (or any subcategory of nuisance dust) causes substantial adverse public health and welfare effects at ambient concentrations; and

“(2) the benefits of applying standards and other requirements of this Act to nuisance dust (or such a subcategory of nuisance dust) outweigh the costs (including local and regional economic and employment impacts) of applying those standards and
other requirements to nuisance dust (or such a sub-
category).”.

SEC. 3933. TEMPORARY PROHIBITION AGAINST REVISING
ANY NATIONAL AMBIENT AIR QUALITY
STANDARD APPLICABLE TO COARSE PARTIC-
ULATE MATTER.

Before the date that is 1 year after the date of the
enactment of this Act, the Administrator of the Environ-
mental Protection Agency may not propose, finalize, im-
plement, or enforce any regulation revising the national
primary ambient air quality standard or the national sec-
ondary ambient air quality standard applicable to particu-
late matter with an aerodynamic diameter greater than
2.5 micrometers under section 109 of the Clean Air Act
(42 U.S.C. 7409).

TITLE XI—NATIONAL LABOR
RELATIONS BOARD REFORM

SEC. 3951. SHORT TITLE.

This title may be cited as the “National Labor Rela-
tions Board Reform Act”.

SEC. 3952. AUTHORITY OF THE NLRB.

Section 10(c) of the National Labor Relations Act
(29 U.S.C. 160) is amended by inserting before the period
at the end the following: “: Provided further, That the
Board shall have no power to order an employer (or seek
an order against an employer) to restore or reinstate any
work, product, production line, or equipment, to rescind
any relocation, transfer, subcontracting, outsourcing, or
other change regarding the location, entity, or employer
who shall be engaged in production or other business oper-
ations, or to require any employer to make an initial or
additional investment at a particular plant, facility, or lo-
cation”.

SEC. 3953. RETROACTIVITY.

The amendment made by section 3952 shall apply to
any complaint for which a final adjudication by the Na-
tional Labor Relations Board has not been made by the
date of enactment of this Act.

TITLE XII—GOVERNMENT NEU-
TRALITY IN CONTRACTING
ACT

SEC. 3971. SHORT TITLE.

This title may be cited as the “Government Neutr-
ality in Contracting Act”.

SEC. 3972. PURPOSES.

It is the purpose of this title to—

(1) promote and ensure open competition on
Federal and federally funded or assisted construc-
tion projects;
(2) maintain Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded or assisted construction projects;

(3) reduce construction costs to the Federal Government and to the taxpayers;

(4) expand job opportunities, especially for small and disadvantaged businesses; and

(5) prevent discrimination against Federal Government contractors or their employees based upon labor affiliation or the lack thereof, thereby promoting the economical, nondiscriminatory, and efficient administration and completion of Federal and federally funded or assisted construction projects.

SEC. 3973. PRESERVATION OF OPEN COMPETITION AND FEDERAL GOVERNMENT NEUTRALITY.

(a) Prohibition.—

(1) General rule.—The head of each executive agency that awards any construction contract after the date of enactment of this Act, or that obligates funds pursuant to such a contract, shall ensure that the agency, and any construction manager acting on behalf of the Federal Government with respect to such contract, in its bid specifications,
project agreements, or other controlling documents does not—

(A) require or prohibit a bidder, offeror, contractor, or subcontractor from entering into, or adhering to, agreements with 1 or more labor organization, with respect to that construction project or another related construction project; or

(B) otherwise discriminate against a bidder, offeror, contractor, or subcontractor because such bidder, offeror, contractor, or subcontractor—

(i) becomes a signatory, or otherwise adheres to, an agreement with 1 or more labor organization with respect to that construction project or another related construction project; or

(ii) refuses to become a signatory, or otherwise adheres to, an agreement with 1 or more labor organization with respect to that construction project or another related construction project.

(2) APPLICATION OF PROHIBITION.—The provisions of this section shall not apply to contracts awarded prior to the date of enactment of this Act,
and subcontracts awarded pursuant to such contracts regardless of the date of such subcontracts.

(3) Rule of Construction.—Nothing in paragraph (1) shall be construed to prohibit a contractor or subcontractor from voluntarily entering into an agreement described in such paragraph.

(b) Recipients of Grants and Other Assistance.—The head of each executive agency that awards grants, provides financial assistance, or enters into cooperative agreements for construction projects after the date of enactment of this Act, shall ensure that—

(1) the bid specifications, project agreements, or other controlling documents for such construction projects of a recipient of a grant or financial assistance, or by the parties to a cooperative agreement, do not contain any of the requirements or prohibitions described in subparagraph (A) or (B) of subsection (a)(1); or

(2) the bid specifications, project agreements, or other controlling documents for such construction projects of a construction manager acting on behalf of a recipient or party described in paragraph (1) do not contain any of the requirements or prohibitions described in subparagraph (A) or (B) of subsection (a)(1).
(c) Failure to Comply.—If an executive agency, a recipient of a grant or financial assistance from an executive agency, a party to a cooperative agreement with an executive agency, or a construction manager acting on behalf of such an agency, recipient, or party, fails to comply with subsection (a) or (b), the head of the executive agency awarding the contract, grant, or assistance, or entering into the agreement, involved shall take such action, consistent with law, as the head of the agency determines to be appropriate.

(d) Exemptions.—

(1) In General.—The head of an executive agency may exempt a particular project, contract, subcontract, grant, or cooperative agreement from the requirements of 1 or more of the provisions of subsections (a) and (b) if the head of such agency determines that special circumstances exist that require an exemption in order to avert an imminent threat to public health or safety or to serve the national security.

(2) Special Circumstances.—For purposes of paragraph (1), a finding of “special circumstances” may not be based on the possibility or existence of a labor dispute concerning contractors or subcontractors that are nonsignatories to, or that
otherwise do not adhere to, agreements with 1 or more labor organization, or labor disputes concerning employees on the project who are not members of, or affiliated with, a labor organization.

(3) ADDITIONAL EXEMPTION FOR CERTAIN PROJECTS.—The head of an executive agency, upon application of an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of such entities, may exempt a particular project from the requirements of any or all of the provisions of subsections (a) or (c) if the agency head finds—

(A) that the awarding authority, recipient of grants or financial assistance, party to a cooperative agreement, or construction manager acting on behalf of any of such entities had issued or was a party to, as of the date of the enactment of this Act, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in subsection (a)(1); and
(B) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of the enactment of this Act.

(e) **Federal Acquisition Regulatory Council.**—With respect to Federal contracts to which this section applies, not later than 60 days after the date of enactment of this Act, the Federal Acquisition Regulatory Council shall take appropriate action to amend the Federal Acquisition Regulation to implement the provisions of this section.

(f) **Definitions.**—In this section:

(1) **Construction contract.**—The term “construction contract” means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(2) **Executive agency.**—The term “executive agency” has the meaning given such term in section 133 of title 41, United States Code, except that such term shall not include the Government Accountability Office.

(3) **Labor organization.**—The term “labor organization” has the meaning given such term in
section 701(d) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(d)).

TITLE XIII—FINANCIAL REGULATORY RESPONSIBILITY ACT

SEC. 3981. SHORT TITLE.

This title may be cited as the “Financial Regulatory Responsibility Act”.

SEC. 3982. DEFINITIONS.

As used in this title—

(1) the term “agency” means the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Financial Stability Oversight Council, the Office of the Comptroller of the Currency, the Office of Financial Research, the National Credit Union Administration, and the Securities and Exchange Commission;

(2) the term “chief economist” means—

(A) with respect to the Board of Governors of the Federal Reserve System, the Director of the Division of Research and Statistics, or an employee of the agency with comparable authority;
(B) with respect to the Bureau of Consumer Financial Protection, the Assistant Director for Research, or an employee of the agency with comparable authority;

(C) with respect to the Commodity Futures Trading Commission, the Chief Economist, or an employee of the agency with comparable authority;

(D) with respect to the Federal Deposit Insurance Corporation, the Director of the Division of Insurance and Research, or an employee of the agency with comparable authority;

(E) with respect to the Federal Housing Finance Agency, the Chief Economist, or an employee of the agency with comparable authority;

(F) with respect to the Financial Stability Oversight Council, the Chief Economist, or an employee of the agency with comparable authority;

(G) with respect to the Office of the Comptroller of the Currency, the Director for Policy Analysis, or an employee of the agency with comparable authority;
(H) with respect to the Office of Financial Research, the Director, or an employee of the agency with comparable authority;

(I) with respect to the National Credit Union Administration, the Chief Economist, or an employee of the agency with comparable authority; and

(J) with respect to the Securities and Exchange Commission, the Director of the Division of Risk, Strategy, and Financial Innovation, or an employee of the agency with comparable authority;

(3) the term “Council” means the Chief Economists Council established under section 9; and

(4) the term “regulation”—

(A) means an agency statement of general applicability and future effect that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency, including rules, orders of general applicability, interpretive releases, and other statements of general applicability that the agency intends to have the force and effect of law;

(B) does not include—
(i) a regulation issued in accordance
with the formal rulemaking provisions of
section 556 or 557 of title 5, United States
Code;

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

(iii) a regulation promulgated pursuant
to statutory authority that expressly
prohibits compliance with this provision;

(iv) a regulation that is certified by
the agency to be an emergency action, if
such certification is published in the Fed-
eral Register; or

(v) a regulation that is promulgated
by the Board of Governors of the Federal
Reserve System or the Federal Open Mar-
ket Committee under section 10A, 10B,
13, 13A, or 19 of the Federal Reserve Act,
or any of subsections (a) through (f) of
section 14 of that Act.

SEC. 3983. REQUIRED REGULATORY ANALYSIS.

(a) REQUIREMENTS FOR NOTICES OF PROPOSED
RULEMAKING.—An agency may not issue a notice of pro-
posed rulemaking unless the agency includes in the notice
of proposed rulemaking an analysis that contains, at a
minimum, with respect to each regulation that is being
proposed—

(1) an identification of the need for the regula-
tion and the regulatory objective, including identi-
fication of the nature and significance of the market
failure, regulatory failure, or other problem that ne-
cessitates the regulation;

(2) an explanation of why the private market or
State, local, or tribal authorities cannot adequately
address the identified market failure or other prob-
lem;

(3) an analysis of the adverse impacts to regu-
lated entities, other market participants, economic
activity, or agency effectiveness that are engendered
by the regulation and the magnitude of such adverse
impacts;

(4) a quantitative and qualitative assessment of
all anticipated direct and indirect costs and benefits
of the regulation (as compared to a benchmark that
assumes the absence of the regulation), including—

(A) compliance costs;

(B) effects on economic activity, net job
creation (excluding jobs related to ensuring
compliance with the regulation), efficiency, competition, and capital formation;

(C) regulatory administrative costs; and

(D) costs imposed by the regulation on State, local, or tribal governments or other regulatory authorities;

(5) if quantified benefits do not outweigh quantitave costs, a justification for the regulation;

(6) identification and assessment of all available alternatives to the regulation, including modification of an existing regulation or statute, together with—

(A) an explanation of why the regulation meets the objectives of the regulation more effectively than the alternatives, and if the agency is proposing multiple alternatives, an explanation of why a notice of proposed rulemaking, rather than an advanced notice of proposed rulemaking, is appropriate; and

(B) if the regulation is not a pilot program, an explanation of why a pilot program is not appropriate;

(7) if the regulation specifies the behavior or manner of compliance, an explanation of why the agency did not instead specify performance objectives;
(8) an assessment of how the burden imposed by the regulation will be distributed among market participants, including whether consumers, investors, or small businesses will be disproportionately burdened;

(9) an assessment of the extent to which the regulation is inconsistent, incompatible, or duplicative with the existing regulations of the agency or those of other domestic and international regulatory authorities with overlapping jurisdiction;

(10) a description of any studies, surveys, or other data relied upon in preparing the analysis;

(11) an assessment of the degree to which the key assumptions underlying the analysis are subject to uncertainty; and

(12) an explanation of predicted changes in market structure and infrastructure and in behavior by market participants, including consumers and investors, assuming that they will pursue their economic interests.

(b) Requirements for Notices of Final Rulemaking.—

(1) In General.—Notwithstanding any other provision of law, an agency may not issue a notice
of final rulemaking with respect to a regulation un-
less the agency—

(A) has issued a notice of proposed rule-
making for the relevant regulation;
(B) has conducted and includes in the no-
tice of final rulemaking an analysis that con-
tains, at a minimum, the elements required
under subsection (a); and
(C) includes in the notice of final rule-
making regulatory impact metrics selected by
the chief economist to be used in preparing the
report required pursuant to section 6.

(2) Consideration of Comments.—The
agency shall incorporate in the elements described in
paragraph (1)(B) the data and analyses provided to
the agency by commenters during the comment pe-
period, or explain why the data or analyses are not
being incorporated.

(3) Comment Period.—An agency shall not
publish a notice of final rulemaking with respect to
a regulation, unless the agency—
(A) has allowed at least 90 days from the
date of publication in the Federal Register of
the notice of proposed rulemaking for the sub-
mission of public comments; or
(B) includes in the notice of final rule-making an explanation of why the agency was not able to provide a 90-day comment period.

(4) PROHIBITED RULES.—

(A) IN GENERAL.—An agency may not publish a notice of final rulemaking if the agency, in its analysis under paragraph (1)(B), determines that the quantified costs are greater than the quantified benefits under subsection (a)(5).

(B) PUBLICATION OF ANALYSIS.—If the agency is precluded by subparagraph (A) from publishing a notice of final rulemaking, the agency shall publish in the Federal Register and on the public website of the agency its analysis under paragraph (1)(B), and provide the analysis to each House of Congress.

(C) CONGRESSIONAL WAIVER.—If the agency is precluded by subparagraph (A) from publishing a notice of final rulemaking, Congress, by joint resolution pursuant to the procedures set forth for joint resolutions in section 802 of title 5, United States Code, may direct the agency to publish a notice of final rule-making notwithstanding the prohibition con-
tained in subparagraph (A). In applying section 802 of title 5, United States Code, for purposes of this paragraph, section 802(e)(2) shall not apply and the term—

(i) “joint resolution” or “joint resolution described in subsection (a)” means only a joint resolution introduced during the period beginning on the submission or publication date and ending 60 days thereafter (excluding days either House of Congress is adjourned for more than 3 days during a session of Congress), the matter after the resolving clause of which is as follows: “That Congress directs, notwithstanding the prohibition contained in (3)(b)(4)(A) of the Financial Regulatory Responsibility Act of 2011, the _____ to publish the notice of final rulemaking for the regulation or regulations that were the subject of the analysis submitted by the _____ to Congress on _____.” (The blank spaces being appropriately filled in.); and

(ii) “submission or publication date” means—
(I) the date on which the analysis under paragraph (1)(B) is submitted to Congress under paragraph (4)(B); or

(II) if the analysis is submitted to Congress less than 60 session days or 60 legislative days before the date on which the Congress adjourns a session of Congress, the date on which the same or succeeding Congress first convenes its next session.

SEC. 3984. RULE OF CONSTRUCTION.

For purposes of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), obtaining, causing to be obtained, or soliciting information for purposes of complying with section 3 with respect to a proposed rulemaking shall not be construed to be a collection of information, provided that the agency has first issued an advanced notice of proposed rulemaking in connection with the regulation, identifies that advanced notice of proposed rulemaking in its solicitation of information, and informs the person from whom the information is obtained or solicited that the provision of information is voluntary.
SEC. 3985. PUBLIC AVAILABILITY OF DATA AND REGULATORY ANALYSIS.

(a) In General.—At or before the commencement of the public comment period with respect to a regulation, the agency shall make available on its public website sufficient information about the data, methodologies, and assumptions underlying the analyses performed pursuant to section 3 so that the analytical results of the agency are capable of being substantially reproduced, subject to an acceptable degree of imprecision or error.

(b) Confidentiality.—The agency shall comply with subsection (a) in a manner that preserves the confidentiality of nonpublic information, including confidential trade secrets, confidential commercial or financial information, and confidential information about positions, transactions, or business practices.

SEC. 3986. FIVE-YEAR REGULATORY IMPACT ANALYSIS.

(a) In General.—Not later than 5 years after the date of publication in the Federal Register of a notice of final rulemaking, the chief economist of the agency shall issue a report that examines the economic impact of the subject regulation, including the direct and indirect costs and benefits of the regulation.

(b) Regulatory Impact Metrics.—In preparing the report required by subsection (a), the chief economist
shall employ the regulatory impact metrics included in the notice of final rulemaking pursuant to section 3(b)(1)(C).

(c) REPRODUCIBILITY.—The report shall include the data, methodologies, and assumptions underlying the evaluation so that the agency’s analytical results are capable of being substantially reproduced, subject to an acceptable degree of imprecision or error.

(d) CONFIDENTIALITY.—The agency shall comply with subsection (c) in a manner that preserves the confidentiality of nonpublic information, including confidential trade secrets, confidential commercial or financial information, and confidential information about positions, transactions, or business practices.

(e) REPORT.—The agency shall submit the report required by subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives and post it on the public website of the agency. The Commodity Futures Trading Commission shall also submit its report to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives.

SEC. 3987. RETROSPECTIVE REVIEW OF EXISTING RULES.

(a) REGULATORY IMPROVEMENT PLAN.—Not later than 1 year after the date of enactment of this title and
every 5 years thereafter, each agency shall develop, submit
to the Committee on Banking, Housing, and Urban Af-
fairs of the Senate and the Committee on Financial Serv-
ices of the House of Representatives, and post on the pub-
lic website of the agency a plan, consistent with law and
its resources and regulatory priorities, under which the
agency will modify, streamline, expand, or repeal existing
regulations so as to make the regulatory program of the
agency more effective or less burdensome in achieving the
regulatory objectives. The Commodity Futures Trading
Commission shall also submit its plan to the Committee
on Agriculture, Nutrition, and Forestry of the Senate and
the Committee on Agriculture of the House of Representa-
tives.

(b) IMPLEMENTATION PROGRESS REPORT.—Two
years after the date of submission of each plan required
under subsection (a), each agency shall develop, submit
to the Committee on Banking, Housing, and Urban Af-
fairs of the Senate and the Committee on Financial Serv-
ices of the House of Representatives, and post on the pub-
lic website of the agency a report of the steps that it has
taken to implement the plan, steps that remain to be taken
to implement the plan, and, if any parts of the plan will
not be implemented, reasons for not implementing those
parts of the plan. The Commodity Futures Trading Com-
mission shall also submit its plan to the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representa-

tives.

SEC. 3988. JUDICIAL REVIEW.

(a) IN GENERAL.—Notwithstanding any other provi-
sion of law, during the period beginning on the date on
which a notice of final rulemaking for a regulation is pub-
ished in the Federal Register and ending 1 year later,
a person that is adversely affected or aggrieved by the reg-
ulation is entitled to bring an action in the United States
Court of Appeals for the District of Columbia Circuit for
judicial review of agency compliance with the requirements
of section 3.

(b) STAY.—The court may stay the effective date of
the regulation or any provision thereof.

(c) RELIEF.—If the court finds that an agency has
not complied with the requirements of section 3, the court
shall vacate the subject regulation, unless the agency
shows by clear and convincing evidence that vacating the
regulation would result in irreparable harm. Nothing in
this section affects other limitations on judicial review or
the power or duty of the court to dismiss any action or
deny relief on any other appropriate legal or equitable
ground.
SEC. 3989. CHIEF ECONOMISTS COUNCIL.

(a) ESTABLISHMENT.—There is established the Chief Economists Council.

(b) MEMBERSHIP.—The Council shall consist of the chief economist of each agency. The members of the Council shall select the first chairperson of the Council. Thereafter the position of Chairperson shall rotate annually among the members of the Council.

(c) MEETINGS.—The Council shall meet at the call of the Chairperson, but not less frequently than quarterly.

(d) REPORT.—One year after the effective date of this title and annually thereafter, the Council shall prepare and submit to the Committee on Banking, Housing, and Urban Affairs and the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Financial Services and the Committee on Agriculture of the House of Representatives a report on—

(1) the benefits and costs of regulations adopted by the agencies during the past 12 months;

(2) the regulatory actions planned by the agencies for the upcoming 12 months;

(3) the cumulative effect of the existing regulations of the agencies on economic activity, innovation, international competitiveness of entities regulated by the agencies, and net job creation (exclud-
ing jobs related to ensuring compliance with the reg-
ulation);

(4) the training and qualifications of the per-
sons who prepared the cost-benefit analyses of each
agency during the past 12 months;

(5) the sufficiency of the resources available to
the chief economists during the past 12 months for
the conduct of the activities required by this title;
and

(6) recommendations for legislative or regu-
lar action to enhance the efficiency and effective-
ess of financial regulation in the United States.

SEC. 3990. CONFORMING AMENDMENTS.

Section 15(a) of the Commodity Exchange Act (7
U.S.C. 19(a)) is amended—

(1) by striking paragraph (1);

(2) in paragraph (2), by striking (2) and all
that follows through “light of—” and inserting the
following:

“(1) CONSIDERATIONS.—Before promulgating a
regulation under this chapter or issuing an order
(except as provided in paragraph (2)), the Commis-
sion shall take into consideration—”;

(3) in paragraph (1), as so redesignated—
(A) in subparagraph (B), by striking “futures” and inserting “the relevant”; (B) in subparagraph (C), by adding “and” at the end; (C) in subparagraph (D), by striking “and” at the end; and (D) by striking subparagraph (E); and (4) by redesignating paragraph (3) as paragraph (2).

SEC. 3991. OTHER REGULATORY ENTITIES.

(a) Securities and Exchange Commission.—Not later than 1 year after the date of enactment of this title, the Securities and Exchange Commission shall provide to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report setting forth a plan for subjecting the Public Company Accounting Oversight Board, the Municipal Securities Rulemaking Board, and any national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–4(a)) to the requirements of this title, other than direct representation on the Council.

(b) Commodity Futures Trading Commission.—Not later than 1 year after the date of enactment of this title, the Commodity Futures Trading Commission shall
provide to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the Committee on Agriculture of the House of Representatives a report setting forth a plan for subjecting any futures association registered under section 17 of the Commodity Exchange Act (7 U.S.C. 21) to the requirements of this title, other than direct representation on the Council.

SEC. 3992. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES.

An agency may perform the analyses required by this title in conjunction with, or as a part of, any other agenda or analysis required by any other provision of law, if such other analysis satisfies the provisions this Act.

SEC. 3993. SEVERABILITY.

If any provision of this title the application of any provision of this title to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this title, shall not be affected thereby.
TITLE XIV—REGULATORY RESPONSIBILITY FOR OUR ECONOMY ACT

SEC. 3994. SHORT TITLE.

This title may be cited as the “Regulatory Responsibility for Our Economy Act”.

SEC. 3995. DEFINITIONS.

In this title—

(1) the term “agency” means any authority of the United States that is—

(A) an agency as defined under section 3502(1) of title 44, United States Code; and

(B) shall include an independent regulatory agency as defined under section 3502(5) of title 44, United States Code;

(2) the term “regulation”—

(A) means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law, that is designed to implement, interpret, or prescribe law or policy or to describe the procedure or practice requirements of an agency; and

(B) shall not include—

(i) regulations issued in accordance with the formal rulemaking provisions of
sections 556 and 557 of title 5, United States Code;

(ii) regulations that pertain to a military or foreign affairs function of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services; or

(iii) regulations that are limited to agency organization, management, or personnel matters;

(3) the term “regulatory action” means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking; and

(4) the term “significant regulatory action” means any regulatory action that is likely to result in a regulation that may—

(A) have an annual effect on the economy of $100,000,000 or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the
environment, public health or safety, or State, local, or tribal governments or communities;

(B) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(C) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof;

(D) add to the national debt; or

(E) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Act.

SEC. 3996. AGENCY REQUIREMENTS.

(a) FEDERAL REGULATORY SYSTEM.—The Federal regulatory system shall—

(1) protect the public health, welfare, safety, and the environment of the United States, especially those promoting economic growth, innovation, competitiveness, and job creation;

(2) be based on the best available science and information;

(3) allow for public participation and an open exchange of ideas;
(4) promote predictability and reduce uncertainty, including adherence to a clearly articulated timeline for the release of regulatory documents at all stages of the regulatory process;

(5) identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends;

(6) take into account benefits and costs, both quantitative and qualitative;

(7) ensure that regulations are accessible, consistent, written in plain language, and easy to understand; and

(8) measure, and seek to improve, the actual results of regulatory requirements.

(b) REQUIREMENTS.—Each agency shall—

(1) propose or adopt a regulation only upon a reasoned determination that the benefits of the regulation justify the costs of the regulation to the extent permitted by law;

(2) tailor regulations of the agency to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, the costs of cumulative regulations;

(3) select, in choosing among alternative regulatory approaches, those approaches that maximize
net benefits, including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity;

(4) specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities are required to adopt;

(5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public; and

(6) use the best available techniques to quantify anticipated present and future benefits and costs.

SEC. 3997. PUBLIC PARTICIPATION.

(a) IN GENERAL.—Regulations shall be—

(1) adopted through a process that involves public participation; and

(2) based, to the extent consistent with law, on the open exchange of information and perspectives among State, local, and tribal officials, experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole.

(b) OPPORTUNITY TO PARTICIPATE.—Each agency shall—
(1) provide the public with an opportunity to participate in the regulatory process;

(2) as authorized by law, afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that shall begin on the date on which the proposed regulation is published in the Federal Register and be not less than 60 days, unless the relevant regulation is designated by the Administrator of the Office of Information and Regulatory Affairs to be an emergency rule;

(3) provide, for both proposed and final rules, timely online access to the rulemaking docket on regulations.gov, including relevant scientific and technical findings, in an open format that can be easily searched and downloaded; and

(4) for proposed rules, provide access to include, to the extent permitted by law, an opportunity for public comment on all pertinent parts of the rulemaking docket, including relevant scientific and technical findings.

(c) SEEKING AFFECTED PARTIES.—Before issuing a notice of proposed rulemaking, each agency shall, where appropriate, seek the views of those who are likely to be
affected, including those who are likely to benefit from and
those who are potentially subject to such rulemaking.

(d) Delay of Implementation.—

(1) In general.—An agency shall delay implement-
ation of an interim final rule until final disposi-
tion of a challenge is entered by a court in the
United States, if—

(A) the agency excepted the rule from no-
tice and public procedure under section 553(b)(B) of title 5, United States Code; and

(B) the agency exception of the rule de-
scribed under paragraph (1) is challenged in a
court in the United States.

(2) Length of delay.—If implementation of
an interim final rule is delayed under paragraph (1),
the delay shall continue until a final disposition of
the challenge is entered by the court.

SEC. 3998. INTEGRATION AND INNOVATION.

(a) Findings.—Congress finds that—

(1) some sectors and industries face a signifi-
cant number of regulatory requirements, some of
which may be redundant, inconsistent, or overlap-
ping; and
(2) greater coordination across agencies should reduce these requirements, thus reducing costs and simplifying and harmonizing rules.

(b) PROMOTION OF INNOVATION.—In developing regulatory actions and identifying appropriate approaches, each agency shall—

(1) promote coordination, simplification, and harmonization; and

(2) identify means to achieve regulatory goals that are designed to promote innovation.

SEC. 3999. FLEXIBLE APPROACHES.

(a) IN GENERAL.—Each agency shall identify and consider regulatory approaches that reduce burdens, especially economic burdens, and maintain flexibility and freedom of choice for the public.

(b) CONTENTS.—The approaches described under subsection (a) shall include warnings, appropriate default rules, disclosure requirements, and the provision of information to the public in a form that is clear and intelligible.

SEC. 3999A. SCIENCE.

Each agency shall ensure the objectivity of any scientific and technological information and processes used to support the regulatory actions of the agency.
SEC. 3999B. RETROSPECTIVE ANALYSES OF EXISTING RULES.

(a) Retrospective Analyses.—

(1) In General.—To facilitate the periodic review of existing significant regulatory actions, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal such regulations in accordance with what has been learned.

(2) Agreement.—Once every 5 years, each agency may enter into an agreement with a qualified private organization to conduct the retrospective analysis described in paragraph (1) of the agency.

(3) Publication Online.—Any retrospective analyses conducted under this subsection, including supporting data, shall be published online.

(b) Agency Plans.—

(1) Plan.—

(A) In General.—Not later than 180 days after the date of enactment of this title, each agency shall develop and submit to the appropriate congressional committees a preliminary plan for reviewing significant regulatory actions issued by the agency, consistent with law, under which the agency shall review its ex-
isting significant regulatory actions once every 5 years to determine whether such regulations should be modified, streamlined, expanded, or repealed so as to make the regulatory program of the agency more effective or less burdensome in achieving the regulatory objectives.

(B) REPEAL.—If the plan described in subparagraph (A) includes suggestions for needed repeals a timeline for such repeals shall also be included in the plan.

(2) REPORT.—Upon completion of a review under a plan submitted under paragraph (1), each agency shall submit to the appropriate congressional committees a report that—

(A) describes the outcome of the review, including which regulations were modified, streamlined, expanded, or repealed;

(B) describes the reasons for the modifications, streamlining, expansions, or repeals described in subparagraph (A); and

(C) in any case where an agency did not take action, describes the reasons why the agency did not take action to modify, streamline, expand, or repeal any significant regulatory actions.
TITLE XV—REDUCING
REGULATORY BURDENS ACT

SEC. 3999C. SHORT TITLE.
This title may be cited as the “Reducing Regulatory
Burdens Act”.

SEC. 3999D. USE OF AUTHORIZED PESTICIDES.
Section 3(f) of the Federal Insecticide, Fungicide,
and Rodenticide Act (7 U.S.C. 136a(f)) is amended by
adding at the end the following:

“(5) USE OF AUTHORIZED PESTICIDES.—Ex-
cept as provided in section 402(s) of the Federal
Water Pollution Control Act, the Administrator or a
State may not require a permit under such Act for
a discharge from a point source into navigable
waters of a pesticide authorized for sale, distribu-
tion, or use under this Act, or the residue of such
a pesticide, resulting from the application of such
pesticide.”.

SEC. 3999E. DISCHARGES OF PESTICIDES.
Section 402 of the Federal Water Pollution Control
Act (33 U.S.C. 1342) is amended by adding at the end
the following:

“(s) DISCHARGES OF PESTICIDES.—
“(1) NO PERMIT REQUIREMENT.—Except as
provided in paragraph (2), a permit shall not be re-
quired by the Administrator or a State under this Act for a discharge from a point source into navigable waters of a pesticide authorized for sale, distribution, or use under the Federal Insecticide, Fungicide, and Rodenticide Act, or the residue of such a pesticide, resulting from the application of such pesticide.

“(2) EXCEPTIONS.—Paragraph (1) shall not apply to the following discharges of a pesticide or pesticide residue:

“(A) A discharge resulting from the application of a pesticide in violation of a provision of the Federal Insecticide, Fungicide, and Rodenticide Act that is relevant to protecting water quality, if—

“(i) the discharge would not have occurred but for the violation; or

“(ii) the amount of pesticide or pesticide residue in the discharge is greater than would have occurred without the violation.

“(B) Stormwater discharges subject to regulation under subsection (p).

“(C) The following discharges subject to regulation under this section:
“(i) Manufacturing or industrial effluent.

“(ii) Treatment works effluent.

“(iii) Discharges incidental to the normal operation of a vessel, including a discharge resulting from ballasting operations or vessel biofouling prevention.”

DIVISION D—DOMESTIC ENERGY
JOB PROMOTION

TITLE I—DOMESTIC JOBS, DOMESTIC ENERGY, AND DEFICIT REDUCTION ACT

SEC. 4101. SHORT TITLE.

This title may be cited as the “Domestic Jobs, Domestic Energy, and Deficit Reduction Act”.

Subtitle A—Outer Continental Shelf Leasing

SEC. 4111. LEASING PROGRAM CONSIDERED APPROVED.

(a) In General.—The Draft Proposed Outer Continental Shelf Oil and Gas Leasing Program 2010–2015 issued by the Secretary of the Interior (referred to in this section as the “Secretary”) under section 18 of the Outer Continental Shelf Lands Act (43 U.S.C. 1344) is considered to have been approved by the Secretary as a final oil and gas leasing program under that section.
(b) **Final Environmental Impact Statement.**—
The Secretary is considered to have issued a final environmental impact statement for the program described in subsection (a) in accordance with all requirements under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

**SEC. 4112. LEASE SALES.**

(a) **In General.**—Except as otherwise provided in this section, not later than 180 days after the date of enactment of this Act and every 270 days thereafter, the Secretary of the Interior (referred to in this section as the “Secretary”) shall conduct a lease sale in each outer Continental Shelf planning area for which the Secretary determines that there is a commercial interest in purchasing Federal oil and gas leases for production on the outer Continental Shelf.

(b) **Subsequent Determinations and Sales.**—If the Secretary determines that there is not a commercial interest in purchasing Federal oil and gas leases for production on the outer Continental Shelf in a planning area under this section, not later than 2 years after the date of enactment of the determination and every 2 years thereafter, the Secretary shall—

(1) determine whether there is a commercial interest in purchasing Federal oil and gas leases for
production on the outer Continental Shelf in the 
planning area; and
(2) if the Secretary determines that there is a 
commercial interest described in subsection (a), con-
duct a lease sale in the planning area.
(c) Exclusion From 5-Year Lease Program.—If 
a planning area for which there is a commercial interest 
described in subsection (a) was not included in a 5-year 
lease program, the Secretary shall include leasing in the 
planning area in the subsequent 5-year lease program.
(d) Petitions.—If a person petitions the Secretary 
to conduct a lease sale for an outer Continental Shelf plan-
ing area in which the person has a commercial interest, 
not later than 60 days after the date of receipt of the peti-
tion, the Secretary shall conduct a lease sale for the area.
(e) Exception.—Subsection (a) shall not apply to 
the North Atlantic Planning Area.

SEC. 4113. APPLICATIONS FOR PERMITS TO DRILL.
Section 5 of the Outer Continental Shelf Lands Act 
(43 U.S.C. 1334) is amended by adding at the end the 
following:
“(k) Applications for Permits to Drill.—
“(1) In general.—Subject to paragraph (2), 
the Secretary shall approve or disapprove an applica-
tion for a permit to drill submitted under this Act
not later than 20 days after the date the application is submitted to the Secretary.

“(2) Disapproval.—If the Secretary disapproves an application for a permit to drill submitted under paragraph (1), the Secretary shall—

“(A) provide to the applicant a description of the reasons for the disapproval of the application;

“(B) allow the applicant to resubmit an application during the 10-day period beginning on the date of the receipt of the description by the applicant; and

“(C) approve or disapprove any resubmitted application not later than 10 days after the date the application is submitted to the Secretary.”

SEC. 4114. LEASE SALES FOR CERTAIN AREAS.

(a) In General.—As soon as practicable but not later than 1 year after the date of enactment of this Act, the Secretary of the Interior shall hold—

(1) Lease Sale 216 for areas in the Central Gulf of Mexico;

(2) Lease Sale 218 for areas in the Western Gulf of Mexico;
(3) Lease Sale 220 for areas offshore the State of Virginia; and

(4) Lease Sale 222 for areas in the Central Gulf of Mexico.

(b) Compliance with Other Laws.—For purposes of the Lease Sales described in subsection (a), the Environmental Impact Statement for the 2007-2015-Year OCS Plan and the applicable Multi-Sale Environmental Impact Statement shall be considered to satisfy the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(c) Energy Projects in the Gulf of Mexico.—

(1) Jurisdiction.—The United States Court of Appeals for the Fifth Circuit shall have exclusive jurisdiction over challenges to offshore energy projects and permits to drill carried out in the Gulf of Mexico.

(2) Filing Deadline.—Any civil action to challenge a project or permit described in paragraph (1) shall be filed not later than 60 days after the date of approval of the project or the issuance of the permit.
Subtitle B—Regulatory Streamlining

SEC. 4131. COMMERCIAL LEASING PROGRAM FOR OIL SHALE RESOURCES ON PUBLIC LAND.

Subsection (e) of the Oil Shale, Tar Sands, and Other Strategic Unconventional Fuels Act of 2005 (42 U.S.C. 15927(e)) is amended—

(1) in the first sentence, by striking “Not later” and inserting the following:

“(1) IN GENERAL.—Not later”;

(2) in the second sentence—

(A) by striking “If the Secretary” and inserting the following:

“(2) LEASE SALES.—

“(A) IN GENERAL.—If the Secretary”; and

(B) by striking “may” and inserting “shall”; and

(3) in the last sentence, by striking “Evidence of interest” and inserting the following:

“(B) EVIDENCE OF INTEREST.—Evidence of interest”; and

(4) by adding at the end the following:

“(C) SUBSEQUENT LEASE SALES.—During any period for which the Secretary determines that there is sufficient support and interest in
a State in the development of tar sands and oil
shale resources, the Secretary shall—

“(i) at least annually, consult with the
persons described in paragraph (1) to ex-
pedite the commercial leasing program for
oil shale resources on public land in the
State; and

“(ii) at least once every 270 days,
conduct a lease sale in the State under the
commercial leasing program regulations.”.

SEC. 4132. JURISDICTION OVER COVERED ENERGY
PROJECTS.

(a) Definition of Covered Energy Project.—
In this section, the term “covered energy project” means
any action or decision by a Federal official regarding—

(1) the leasing of Federal land (including sub-
merged land) for the exploration, development, pro-
duction, processing, or transmission of oil, natural
gas, or any other source or form of energy, including
actions and decisions regarding the selection or of-
fering of Federal land for such leasing; or

(2) any action under such a lease, except that
this section and Act shall not apply to a dispute be-
tween the parties to a lease entered into a provision
of law authorizing the lease regarding obligations
under the lease or the alleged breach of the lease.

(b) **EXCLUSIVE JURISDICTION OVER CAUSES AND**
**CLAIMS RELATING TO COVERED ENERGY PROJECTS.**—
Notwithstanding any other provision of law, the United
States District Court for the District of Columbia shall
have exclusive jurisdiction to hear all causes and claims
under this section or any other Act that arise from any
covered energy project.

(c) **TIME FOR FILING COMPLAINT.**—

(1) **IN GENERAL.**—Each case or claim described
in subsection (b) shall be filed not later than the end
of the 60-day period beginning on the date of the ac-
tion or decision by a Federal official that constitutes
the covered energy project concerned.

(2) **PROHIBITION.**—Any cause or claim de-
scribed in subsection (b) that is not filed within the
time period described in paragraph (1) shall be
barred.

(d) **DISTRICT COURT FOR THE DISTRICT OF COLUM-
BIA DEADLINE.**—

(1) **IN GENERAL.**—Each proceeding that is sub-
ject to subsection (b) shall—
(A) be resolved as expeditiously as practicable and in any event not more than 180 days after the cause or claim is filed; and

(B) take precedence over all other pending matters before the district court.

(2) Failure to Comply with Deadline.—If an interlocutory or final judgment, decree, or order has not been issued by the district court by the deadline required under this section, the cause or claim shall be dismissed with prejudice and all rights relating to the cause or claim shall be terminated.

(e) Ability To Seek Appellate Review.—An interlocutory or final judgment, decree, or order of the district court under this section may be reviewed by no other court except the Supreme Court.

(f) Deadline for Appeal to the Supreme Court.—If a writ of certiorari has been granted by the Supreme Court pursuant to subsection (e), the interlocutory or final judgment, decree, or order of the district court shall be resolved as expeditiously as practicable and in any event not more than 180 days after the interlocutory or final judgment, decree, order of the district court is issued.
SEC. 106. COMPLETION AND REVIEW OF ENVIRONMENTAL IMPACT STATEMENTS.

“(a) Completion.—

“(1) In general.—Notwithstanding any other provision of law, each review carried out under section 102(2)(C) with respect to any action taken under any provision of law, or for which funds are made available under any provision of law, shall be completed not later than the date that is 270 days after the commencement of the review.

“(2) Failure to complete review.—If a review described in paragraph (1) has not been completed for an action subject to section 102(2)(C) by the date specified in paragraph (1)—

“(A) the action shall be considered to have no significant impact described in section 102(2)(C); and

“(B) that classification shall be considered to be a final agency action.

“(3) Unemployment rate.—If the national unemployment rate is 5 percent or more, the lead agency conducting a review of an action under this...
section shall use the most expeditious means authorized under this title to conduct the review.

“(b) Lead Agency.—The lead agency for a review of an action under this section shall be the Federal agency to which funds are made available for the action.

“(c) Review.—

“(1) Administrative Appeals.—There shall be a single administrative appeal for each review carried out pursuant to section 102(2)(C).

“(2) Judicial Review.—

“(A) In General.—On resolution of the administrative appeal, judicial review of the final agency decision after exhaustion of administrative remedies shall lie with the United States Court of Appeals for the District of Columbia Circuit.

“(B) Administrative Record.—An appeal to the court described in subparagraph (A) shall be based only on the administrative record.

“(C) Pendency of Judicial Review.—After an agency has made a final decision with respect to a review carried out under this subsection, the decision shall be effective during
the course of any subsequent appeal to a court
described in subparagraph (A).

“(3) CIVIL ACTION.—Each civil action covered
by this section shall be considered to arise under the
laws of the United States.”.

SEC. 4134. CLEAN AIR REGULATION.

(a) REGULATION OF GREENHOUSE GASES.—Section
302(g) of the Clean Air Act (42 U.S.C. 7602(g)) is
amended—

(1) by striking “(g) The term” and inserting
the following:

“(g) AIR POLLUTANT.—

“(1) IN GENERAL.—The term”;

(2) by striking “Such term” and inserting the
following:

“(2) INCLUSIONS.—The term ‘air pollutant’”;

and

(3) by adding at the end the following:

“(3) EXCLUSIONS.—The term ‘air pollutant’
does not include carbon dioxide, methane from agri-
culture or livestock, or water vapor.”.

(b) EMISSION WAIVERS.—The Administrator of the
Environmental Protection Agency shall not grant to any
State any waiver of Federal preemption of motor vehicle
standards under section 209(b) of the Clean Air Act (42
U.S.C. 7543(b)) for preemption under that Act for any
regulation of the State to control greenhouse gas emis-
sions from motor vehicles.

SEC. 4135. EMPLOYMENT EFFECTS OF ACTIONS UNDER
CLEAN AIR ACT.

Section 321(b) of the Clean Air Act (42 U.S.C.
7621(b)) is amended—

(1) by designating the first through eighth sen-
tences as paragraphs (1) through (8), respectively;

and

(2) by adding at the end the following:

“(9) ECONOMIC ANALYSIS.—Not later than 30
days before conducting a public hearing or providing
notice of a determination that a hearing is not nec-
essary with respect to a requirement described in
paragraph (1), the Administrator shall—

“(A) conduct a full economic analysis of
the requirement; and

“(B) make the results of the analysis avail-
able to the public.

“(10) ECONOMIC REVIEW BOARD.—

“(A) IN GENERAL.—Not later than 30
days after the date on which the Administrator
makes the results of an economic analysis of a
requirement available to the public under para-
graph (9)(B), the Secretary of Commerce shall establish an economic review board consisting of a representative from each Federal agency with jurisdiction over affected industries to assess—

“(i) the cumulative economic impact of the requirement, including the direct, indirect, quantifiable, and qualitative effects;

“(ii) the cost of compliance with the requirement;

“(iii) the effect of the requirement on the retirement or closure of domestic businesses;

“(iv) the direct and indirect adverse impacts on the economies of local communities that are projected to result from the requirement;

“(v) energy sectors that could be expected to retire units as a result of the requirement;

“(vi) the impact of the requirement on the price of electricity, oil, gas, coal, and renewable resources;

“(vii) the economic harm to consumers resulting from the requirement;
“(viii) the impact of the requirement on the ability of industries and businesses in the United States to compete with industries and businesses in other countries, with respect to competitiveness in both domestic and foreign markets;

“(ix) the regions of the United States that are forecasted to be—

“(I) most affected from the direct and indirect adverse impacts of the requirement from the retirement of impacted units and increased prices for retail electricity, transportation fuels, heating oil, and petrochemicals; and

“(II) least affected from adverse impacts described in subclause (I) due to the creation of new jobs and economic growth that are expected to result directly and indirectly from energy construction projects;

“(x) the adverse impacts of the requirement on electric reliability that are expected to result from the retirement of electric generation;
“(xi) the geographical distribution of the projected adverse electric reliability impacts of the requirement;

“(xii) Federal, State, and local policies that have been or will be implemented to support energy infrastructure in the United States, including policies that promote fuel diversity, affordable and reliable electricity, and energy security; and

“(xiii) other direct and indirect impacts that are expected to result from the cumulative obligation to comply with the requirement.

“(B) REPORT.—Not later than 30 days after the date on which the economic review board completes the assessment of a requirement under subparagraph (A), the economic review board shall submit to Congress, the President, and the Secretary a report that describes the results of the assessment.

“(C) REGULATIONS.—The Administrator shall not promulgate regulations to implement a requirement described in paragraph (1) until at least 60 days after the date of submission of
the report on the requirement under subpara-
graph (B).”.

**SEC. 4136. ENDANGERED SPECIES.**

(a) **Emergencies.**—Section 10 of the Endangered Species Act of 1973 (16 U.S.C. 1539) is amended by adding at the end the following:

“(k) **Emergencies.**—On the declaration of an emergency by the Governor of a State, the Secretary shall, for the duration of the emergency, temporarily exempt from the prohibition against taking, and the prohibition against the adverse modification of critical habitat, under this Act any action that is reasonably necessary to avoid or ameliorate the impact of the emergency, including the operation of any water supply or flood control project by a Federal agency.”.

(b) **Prohibition of Consideration of Impact of Greenhouse Gas.**—

(1) **In general.**—The Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) is amended by adding at the end the following:

“**SEC. 19. PROHIBITION OF CONSIDERATION OF IMPACT OF GREENHOUSE GAS.**

“(a) **Definition of Greenhouse.**—In this section, the term ‘greenhouse gas’ means any of—

“(1) carbon dioxide;
“(2) methane;
“(3) nitrous oxide;
“(4) sulfur hexafluoride;
“(5) a hydrofluorocarbon;
“(6) a perfluorocarbon; or
“(7) any other anthropogenic gas designated by
the Secretary for purposes of this section.
“(b) IMPACT OF GREENHOUSE GAS.—The impact of
greenhouse gas on any species of fish or wildlife or plant
shall not be considered for any purpose in the implementa-
tion of this Act.”.

(2) CONFORMING AMENDMENT.—The table of
contents in the first section of the Endangered Spe-
cies Act of 1973 (16 U.S.C. prec. 1531) is amended
by adding at the end the following:

“Sec. 18. Annual cost analysis by the Fish and Wildlife Service.
“Sec. 19. Prohibition of consideration of impact of greenhouse gas.”.

SEC. 4137. REISSUANCE OF PERMITS AND LEASES.

(a) ENVIRONMENTAL PROTECTION AGENCY.—Not
later than 30 days after the date of enactment of this Act,
the Administrator of the Environment Protection Agency
shall approve the specification of the areas described in
the notice entitled “Final Determination of the Assistant
Administrator for Water Pursuant to Section 404(c) of
the Clean Water Act Concerning the Spruce No. 1 Mine,
Logan County, WV” (76 Fed. Reg. 3126; January 19, 2011), with no further review or analysis.

(b) DEPARTMENT OF THE INTERIOR.—Not later than 30 days after the date of enactment of this Act, the Secretary of the Interior shall issue or reissue, with no further review or analysis, each lease for the production of oil or gas in the State of Utah was cancelled during any of calendar years 2009 through 2011.

SEC. 4138. CENTRAL VALLEY PROJECT.

The Act of August 27, 1954 (68 Stat. 879, chapter 1012; 16 U.S.C. 695d et seq.) is amended by adding at the end the following:

“SEC. 9. EFFECT OF BIOLOGICAL OPINIONS.

“Notwithstanding any other provision of law, in connection with the Central Valley Project, the Bureau of Reclamation and an agency of the State of California operating a water project in connection with the Project shall not restrict operations of an applicable project pursuant to any biological opinion issued under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), if the restriction would result in a level of allocation of water that is less than the historical maximum level of allocation of water under the project.”
SEC. 4139. BEAUFORT SEA OIL DRILLING PROJECT.

Not later than 30 days after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall issue a permit under the Clean Air Act (42 U.S.C. 7401 et seq.) to Shell Oil Company to permit the Company to drill for oil in the Beaufort Sea, with no further review or analysis.

SEC. 4140. ENVIRONMENTAL LEGAL FEES.

Section 504 of title 5, United States Code, is amended by adding at the end the following:

“(g) ENVIRONMENTAL LEGAL FEES.—Notwithstanding section 1304 of title 31, no award may be made under this section and no amounts may be obligated or expended from the Claims and Judgment Fund of the United States Treasury to pay any legal fees of an environmental nongovernmental organization related to an action that (with respect to the United States)—

“(1) prevents, terminates, or reduces access to or the production of—

“(A) energy;

“(B) a mineral resource;

“(C) water by agricultural producers;

“(D) a resource by commercial or recreational fishermen; or

“(E) grazing or timber production on Federal land;
“(2) diminishes the private property value of a property owner; or
“(3) eliminates or prevents 1 or more jobs.”.

TITLE II—JOBS AND ENERGY PERMITTING ACT

SEC. 4201. SHORT TITLE.

This title may be cited as the “Jobs and Energy Permitting Act”.

SEC. 4202. AIR QUALITY MEASUREMENT.

Section 328(a)(1) of the Clean Air Act (42 U.S.C. 7627(a)(1)) is amended in the second sentence by inserting before the period at the end the following: “, except that any air quality impact of any OCS source shall be measured or modeled, as appropriate, and determined solely with respect to the impacts in the corresponding onshore area”.

SEC. 4203. OUTER CONTINENTAL SHELF SOURCE.

Section 328(a)(4) of the Clean Air Act (42 U.S.C. 7627(a)(4)) is amended—

(1) in the matter preceding subparagraph (A), by striking “subsections (a) and (b)” and inserting “this subsection and subsections (b) and (d)”; and

(2) in subparagraph (C)—

(A) by redesignating clauses (i) through (iii) as subclauses (I) through (III), respec-
tively, and by indenting the subclauses appropriately;

(B) by striking “The terms” and inserting “(i) IN GENERAL.—The terms”; and

(C) by striking the undesignated matter following subclause (III) (as redesignated by subparagraph (A)) and inserting the following:

“(ii) OCS SOURCE ACTIVITY.—An OCS source activity includes platform and drill ship exploration, construction, development, production, processing, and transportation.

“(iii) EMISSIONS.—Emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source—

“(I) shall be considered direct emissions from the OCS source; but

“(II) shall not be subject to any emission control requirement applicable to the source under subpart 1 of part C of title I.
“(iv) Platform or Drill Ship Exploration.—For platform or drill ship exploration, an OCS source is established at the point in time when drilling commences at a location and ceases to exist when drilling activity ends at that location or is temporarily interrupted because the platform or drill ship relocates for weather or other reasons.”.

SEC. 4204. PERMITS.

Section 328 of the Clean Air Act (42 U.S.C. 7627) is amended by adding at the end the following:

“(d) Permit Application.—In the case of a completed application for a permit under this Act for platform or drill ship exploration for an OCS source—

“(1) final agency action (including any reconsideration of the issuance or denial of the permit) shall be taken not later than 180 days after the date of filing the completed application;

“(2) the Environmental Appeals Board of the Environmental Protection Agency shall have no authority to consider any matter relating to the consideration, issuance, or denial of the permit;

“(3) no administrative stay of the effectiveness of the permit may extend beyond the date that is
180 days after the date of filing the completed application;

“(4) the final agency action shall be considered to be nationally applicable under section 307(b); and

“(5) judicial review of the final agency action shall be available only in accordance with section 307(b) without additional administrative review or adjudication.”.

TITLE III—AMERICAN ENERGY AND WESTERN JOBS ACT

SEC. 4301. SHORT TITLE.

This title may be cited as the “American Energy and Western Jobs Act”.

SEC. 4302. RESCISSION OF CERTAIN INSTRUCTION MEMORANDA.

The following are rescinded and shall have no force or effect:


(2) The Bureau of Land Management Instruction Memorandum entitled “Energy Policy Act Sec-

(3) Secretarial Order No. 3310 issued by the Secretary of the Interior on December 22, 2010.

SEC. 4303. AMENDMENTS TO THE MINERAL LEASING ACT.

(a) Onshore Oil and Gas Lease Issuance Improvement.—Section 17(b)(1)(A) of the Mineral Leasing Act (30 U.S.C. 226(b)(1)(A)) is amended in the seventh sentence, by striking “Leases shall be issued within 60 days following payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year” and inserting “The Secretary of the Interior shall automatically issue a lease 60 days after the date of the payment by the successful bidder of the remainder of the bonus bid, if any, and the annual rental for the first lease year, unless the Secretary of the Interior is able to issue the lease before that date. The filing of any protest to the sale or issuance of a lease shall not extend the date by which the lease is to be issued”.

(b) Judicial Review.—Section 17 of the Mineral Leasing Act (30 U.S.C. 226) is amended by adding at the end the following:

“(q) Judicial Review.—Any action seeking judicial review of the adequacy of any program or site-specific environmental impact statement under section 102 of the
National Environmental Policy Act of 1969 (42 U.S.C. 4332) concerning oil and gas leasing for onshore Federal land shall be barred unless the action is brought in the appropriate district court of the United States by the date that is 60 days after the date on which there is published in the Federal Register the notice of the availability of the environmental impact statement.”.

(c) Determination of Impact of Proposed Policy Modifications.—The Mineral Leasing Act is amended by inserting after section 37 (30 U.S.C. 193) the following:

“SEC. 38. DETERMINATION OF IMPACT OF PROPOSED POLICY MODIFICATIONS.

“(a) Definitions.—In this section:

“(1) Department.—The term ‘Department’ means the Department of the Interior.

“(2) Secretary.—The term ‘Secretary’ means the Secretary of the Interior.

“(b) Duty of Secretary.—

“(1) In general.—Before the modification and implementation of any onshore oil or natural gas preleasing or leasing and development policy (as in effect as of January 1, 2010) or a policy relating to protecting the wilderness characteristics of public land, the Secretary shall—
“(A) complete an economic impact assessment in accordance with paragraph (2); and

“(B) issue a determination that the proposed policy modification would have the effects described in paragraph (2)(A).

“(2) REQUIREMENTS.—In carrying out an assessment to determine the impact of a proposed policy modification described in paragraph (1), the Secretary shall—

“(A) in consultation with the appropriate officials of each State (including political subdivisions of the State) in which 1 or more parcels of land subject to oil and natural gas leasing are located and any other appropriate individuals or entities, as determined by the Secretary—

“(i)(I) carry out an economic analysis of the impact of the policy modification on oil- and natural gas-related employment opportunities and domestic reliance on foreign imports of petroleum resources; and

“(II) certify that the policy modification would not result in a detrimental impact on employment opportunities relating to oil- and natural gas-related development
or contribute to an increase in the domestic use of imported petroleum resources; and

“(ii) carry out a policy assessment to determine the manner by which the policy modification would impact—

“(I) revenues from oil and natural gas receipts to the general fund of the Treasury, including a certification that the modification would, for the 10-year period beginning on the date of implementation of the modification, not contribute to an aggregate loss of oil and natural gas receipts; and

“(II) revenues to the treasury of each affected State that shares oil and natural gas receipts with the Federal Government, including a certification that the modification would, for the 10-year period beginning on the date of implementation of the modification, not contribute to an aggregate loss of oil and natural gas receipts; and
“(B) provide notice to the public of, and an opportunity to comment on, the policy modification in a manner consistent with subchapter II of chapter 5 and chapter 7 of title 5, United States Code (commonly known as the ‘Administrative Procedure Act’).”.

SEC. 4304. ANNUAL REPORT ON REVENUES GENERATED FROM MULTIPLE USE OF PUBLIC LAND.

(a) ANNUAL REPORT.—As part of the annual agency budget, the Secretary of the Interior (acting through the Director of the Bureau of Land Management) and the Secretary of Agriculture (acting through the Chief of the Forest Service) shall submit an annual report detailing, for each field office, the revenues generated by each use of public land.

(b) INCLUSIONS.—The report shall include—

(1) a line item for each use of public land, including use for—

(A) grazing;

(B) recreation;

(C) timber;

(D) leasable minerals, including a distinct accounting for each of oil, natural gas, coal, and geothermal development;

(E) locatable minerals;
(F) renewable energy sources, including a
distinct accounting for each of wind and solar
energy;

(G) the sale of land; and

(H) transmission; and

(2) identification of the total acres designated
as wilderness, wilderness study areas, and wild
lands.

(e) Availability.—The Secretary of the Interior
and the Secretary of Agriculture shall make the report
prepared under this section publicly available on the appli-
cable agency website.

SEC. 4305. FEDERAL ONSHORE OIL AND NATURAL GAS PRO-
DUCTION GOAL.

(a) In General.—The Secretary of the Interior shall
establish a domestic strategic production goal for the de-
velopment of oil and natural gas managed by the Federal
Government.

(b) Requirements.—In establishing the goal under
subsection (a), the Secretary shall—

(1) ensure that the United States maintains or
increases production of Federal onshore oil and nat-
ural gas;
(2) ensure that the 10-year production outlook for Federal onshore oil and natural gas be provided annually;

(3) examine steps to streamline the permitting process to meet the goal;

(4) include the goal in each resource management plan; and

(5) analyze each proposed policy of the Department of the Interior for the potential impact of the policy on achieving the goal before implementation of the policy.

SEC. 4306. OIL SHALE.

(a) ADDITIONAL RESEARCH AND DEVELOPMENT LEASE SALES.—Not later than 180 days after the date of enactment of this Act, the Secretary of the Interior shall hold a lease sale in which the Secretary of the Interior shall offer an additional 10 parcels for lease for research, development, and demonstration of oil shale resources in accordance with the terms offered in the solicitation of bids for the leases described in the notice entitled “Potential for Oil Shale Development; Call for Nominations—Oil Shale Research, Development, and Demonstration (R, D, and D) Program” (74 Fed. Reg. 2611).

(b) APPLICATION OF REGULATIONS.—The final rule entitled “Oil Shale Management—General” (73 Fed. Reg.
198

69414), shall apply to all commercial leasing for the man-
agement of federally owned oil shale and any associated
minerals located on Federal land.

**TITLE IV—MINING JOBS**

**PROTECTION ACT**

**SEC. 4401. SHORT TITLE.**

This title may be cited as the “Mining Jobs Protec-
tion Act”.

**SEC. 4402. PERMITS FOR DREDGED OR FILL MATERIAL.**

Section 404 of the Federal Water Pollution Control
Act (33 U.S.C. 1344) is amended by striking subsection
(c) and inserting the following:

“(c) **AUTHORITY OF ADMINISTRATOR TO DIS-**

**APPROVE SPECIFICATIONS.**—

“(1) **IN GENERAL.**—The Administrator, in ac-
cordance with this subsection, may prohibit the spec-
ification of any defined area as a disposal site, and
may deny or restrict the use of any defined area for
specification as a disposal site, in any case in which
the Administrator determines, after notice and op-
portunity for public hearings and consultation with
the Secretary, that the discharge of those materials
into the area will have an unacceptable adverse ef-
fect on—

“(A) municipal water supplies;
“(B) shellfish beds and fishery areas (including spawning and breeding areas);

“(C) wildlife; or

“(D) recreational areas.

“(2) DEADLINE FOR ACTION.—

“(A) IN GENERAL.—The Administrator shall—

“(i) not later than 30 days after the date on which the Administrator receives from the Secretary for review a specification proposed to be issued under subsection (a), provide notice to the Secretary of, and publish in the Federal Register, a description of any potential concerns of the Administrator with respect to the specification, including a list of measures required to fully address those concerns; and

“(ii) if the Administrator intends to disapprove a specification, not later than 60 days after the date on which the Administrator receives a proposed specification under subsection (a) from the Secretary, provide to the Secretary and the applicant, and publish in the Federal Register, a statement of disapproval of the
specification pursuant to this subsection, including the reasons for the disapproval.

“(B) FAILURE TO ACT.—If the Administrator fails to take any action or meet any deadline described in subparagraph (A) with respect to a proposed specification, the Administrator shall have no further authority under this subsection to disapprove or prohibit issuance of the specification.

“(3) NO RETROACTIVE DISAPPROVAL.—

“(A) IN GENERAL.—The authority of the Administrator to disapprove or prohibit issuance of a specification under this subsection—

“(i) terminates as of the date that is 60 days after the date on which the Administrator receives the proposed specification from the Secretary for review; and

“(ii) shall not be used with respect to any specification after issuance of the specification by the Secretary under subsection (a).

“(B) SPECIFICATIONS DISAPPROVED BEFORE DATE OF ENACTMENT.—In any case in which, before the date of enactment of this sub-
paragraph, the Administrator disapproved a specification under this subsection (as in effect on the day before the date of enactment of the Jobs Through Growth Act) after the specification was issued by the Secretary pursuant to subsection (a)—

“(i) the Secretary may—

“(I) reevaluate and reissue the specification after making appropriate modifications; or

“(II) elect not to reissue the specification; and

“(ii) the Administrator shall have no further authority to disapprove the modified specification or any reissuance of the specification.

“(C) Finality.—An election by the Secretary under subparagraph (B)(i) shall constitute final agency action.

“(4) Applicability.—Except as provided in paragraph (3), this subsection applies to each specification proposed to be issued under subsection (a) that is pending as of, or requested or filed on or after, the date of enactment of the Jobs Through Growth Act”.

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SEC. 4403. REVIEW OF PERMITS.

Section 404(q) of the Federal Water Pollution Control Act (33 U.S.C. 1344(q)) is amended—

(1) in the first sentence, by striking “(q) Not later than” and inserting the following:

“(q) AGREEMENTS; HIGHER REVIEW OF PERMITS.—

“(1) AGREEMENTS.—

“(A) IN GENERAL.—Not later than”;

(2) in the second sentence, by striking “Such agreements” and inserting the following:

“(B) DEADLINE.—Agreements described in subparagraph (A)”; and

(3) by adding at the end the following:

“(2) HIGHER REVIEW OF PERMITS.—

“(A) IN GENERAL.—Subject to subparagraph (C), before the Administrator or the head of another Federal agency requests that a permit proposed to be issued under this section receive a higher level of review by the Secretary, the Administrator or other head shall—

“(i) consult with the head of the State agency having jurisdiction over aquatic resources in each State in which activities under the requested permit would be carried out; and
“(ii) obtain official consent from the State agency (or, in the case of multiple States in which activities under the requested permit would be carried out, from each State agency) to designate areas covered or affected by the proposed permit as aquatic resources of national importance.

“(B) Failure to obtain consent.—If the Administrator or the head of another Federal agency does not obtain State consent described in subparagraph (A) with respect to a permit proposed to be issued under this section, the Administrator or Federal agency may not proceed in seeking higher review of the permit.

“(C) Limitation on elevations.—The Administrator or the head of another Federal agency may request that a permit proposed to be issued under this section receive a higher level of review by the Secretary not more than once per permit.

“(D) Effective date.—This paragraph applies to permits for which applications are submitted under this section on or after January 1, 2010.”.
TITLE V—ENERGY TAX
PREVENTION ACT

SEC. 4501. SHORT TITLE.
This title may be cited as the “Energy Tax Prevention Act”.

SEC. 4502. NO REGULATION OF EMISSIONS OF GREENHOUSE GASES.
(a) IN GENERAL.—Title III of the Clean Air Act (42 U.S.C. 7601 et seq.) is amended by adding at the end the following:

“SEC. 330. NO REGULATION OF EMISSIONS OF GREENHOUSE GASES.
“(a) DEFINITION.—In this section, the term ‘greenhouse gas’ means any of the following:
“(1) Water vapor.
“(2) Carbon dioxide.
“(3) Methane.
“(4) Nitrous oxide.
“(5) Sulfur hexafluoride.
“(6) Hydrofluorocarbons.
“(7) Perfluorocarbons.
“(8) Any other substance subject to, or proposed to be subject to, regulation, action, or consideration under this Act to address climate change.
“(b) LIMITATION ON AGENCY ACTION.—
“(1) LIMITATION.—

“(A) IN GENERAL.—The Administrator may not, under this Act, promulgate any regulation concerning, take action relating to, or take into consideration the emission of a greenhouse gas to address climate change.

“(B) AIR POLLUTANT DEFINITION.—The definition of the term ‘air pollutant’ in section 302(g) does not include a greenhouse gas. Notwithstanding the previous sentence, such definition may include a greenhouse gas for purposes of addressing concerns other than climate change.

“(2) EXCEPTIONS.—Paragraph (1) does not prohibit the following:

“(A) Notwithstanding paragraph (4)(B), implementation and enforcement of the rule entitled ‘Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards’ (75 Fed. Reg. 25324 (May 7, 2010) and without further revision) and finalization, implementation, enforcement, and revision of the proposed rule entitled ‘Greenhouse Gas Emissions Standards and Fuel Efficiency Standards for Medium- and
Heavy-Duty Engines and Vehicles’ published at 75 Fed. Reg. 74152 (November 30, 2010).

“(B) Implementation and enforcement of section 211(o).

“(C) Statutorily authorized Federal research, development, and demonstration programs addressing climate change.

“(D) Implementation and enforcement of title VI to the extent such implementation or enforcement only involves one or more class I or class II substances (as such terms are defined in section 601).

“(E) Implementation and enforcement of section 821 (42 U.S.C. 7651k note) of Public Law 101–549 (commonly referred to as the ‘Clean Air Act Amendments of 1990’).

“(3) INAPPLICABILITY OF PROVISIONS.—Nothing listed in paragraph (2) shall cause a greenhouse gas to be subject to part C of title I (relating to prevention of significant deterioration of air quality) or considered an air pollutant for purposes of title V (relating to air permits).

“(4) CERTAIN PRIOR AGENCY ACTIONS.—The following rules, and actions (including any supple-
ment or revision to such rules and actions) are re-
pealed and shall have no legal effect:

“(A) ‘Mandatory Reporting of Greenhouse
Gases’, published at 74 Fed. Reg. 56260 (Octo-
ber 30, 2009).

“(B) ‘Endangerment and Cause or Con-
tribute Findings for Greenhouse Gases under
section 202(a) of the Clean Air Act’ published

“(C) ‘Reconsideration of the Interpretation
of Regulations That Determine Pollutants Cov-
ered by Clean Air Act Permitting Programs’
published at 75 Fed. Reg. 17004 (April 2,
2010) and the memorandum from Stephen L.
Johnson, Environmental Protection Agency
(EPA) Administrator, to EPA Regional Admin-
istrators, concerning ‘EPA’s Interpretation of
Regulations that Determine Pollutants Covered
by Federal Prevention of Significant Deteriora-
tion (PSD) Permit Program’ (Dec. 18, 2008).

“(D) ‘Prevention of Significant Deteriora-
tion and Title V Greenhouse Gas Tailoring
Rule’, published at 75 Fed. Reg. 31514 (June
3, 2010).


“(I) ‘Determinations Concerning Need for Error Correction, Partial Approval and Partial


“(L) Except for action listed in paragraph (2), any other Federal action under this Act occurring before the date of enactment of this section that applies a stationary source permitting requirement or an emissions standard for a greenhouse gas to address climate change.

“(5) STATE ACTION.—

“(A) NO LIMITATION.—This section does not limit or otherwise affect the authority of a
State to adopt, amend, enforce, or repeal State laws and regulations pertaining to the emission of a greenhouse gas.

“(B) Exception.—

“(i) Rule.—Notwithstanding subparagraph (A), any provision described in clause (ii)—

“(I) is not federally enforceable;

“(II) is not deemed to be a part of Federal law; and

“(III) is deemed to be stricken from the plan described in clause (ii)(I) or the program or permit described in clause (ii)(II), as applicable.

“(ii) Provisions Defined.—For purposes of clause (i), the term ‘provision’ means any provision that—

“(I) is contained in a State implementation plan under section 110 and authorizes or requires a limitation on, or imposes a permit requirement for, the emission of a greenhouse gas to address climate change; or

“(II) is part of an operating permit program under title V, or a per-
mit issued pursuant to title V, and
authorizes or requires a limitation on
the emission of a greenhouse gas to
address climate change.

“(C) ACTION BY ADMINISTRATOR.—The
Administrator may not approve or make feder-
ally enforceable any provision described in sub-
paragraph (B)(ii).”.

SEC. 4503. PRESERVING ONE NATIONAL STANDARD FOR
AUTOMOBILES.

Section 209(b) of the Clean Air Act (42 U.S.C. 7543)
is amended by adding at the end the following:

“(4) With respect to standards for emissions of
greenhouse gases (as defined in section 330) for
model year 2017 or any subsequent model year for
new motor vehicles and new motor vehicle engines—

“(A) the Administrator may not waive ap-
plication of subsection (a); and

“(B) no waiver granted prior to the date of
enactment of this paragraph may be considered
to waive the application of subsection (a).”.
TITLE VI—REPEAL RESTRICTIONS ON GOVERNMENT USE OF DOMESTIC ALTERNATIVE FUELS

SEC. 4601. REPEAL OF UNNECESSARY BARRIER TO DOMESTIC FUEL PRODUCTION.

Section 526 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17142) is repealed.

TITLE VII—PUBLIC LANDS JOB CREATION ACT

SEC. 4701. SHORT TITLE.

This title may be cited as the “Public Lands Job Creation Act”.

SEC. 4702. REVIEW OF CERTAIN FEDERAL REGISTER NOTICES.

If, by the date that is 45 days after the date on which a State Bureau of Land Management office has submitted a Federal Register notice to the Washington, DC, office of the Bureau of Land Management for Department of Interior review, the review has not been completed—

(1) the notice shall consider to be approved; and

(2) the State Bureau of Land Management office shall immediately forward the notice to the Federal Register for publication.
DIVISION E—EXPORT PROMOTION

SEC. 5001. SHORT TITLE.
This division may be cited as the "Creating American Jobs through Exports Act of 2011".

SEC. 5002. RENEWAL OF TRADE PROMOTION AUTHORITY.
(a) In General.—Section 2103 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3803) is amended—

(1) in subsection (a)(1), by striking subparagraph (A) and inserting the following:

"(A) may enter into trade agreements with foreign countries—

“(i) on and after the date of the enactment of the Creating American Jobs through Exports Act of 2011 and before June 1, 2013; or

“(ii) on and after June 1, 2013, and before December 31, 2013, if trade authorities procedures are extended under subsection (c); and”;

(2) in subsection (b)(1), by striking subparagraph (C) and inserting the following:

“(C) The President may enter into a trade agreement under this paragraph—
“(i) on and after the date of the enactment of the Creating American Jobs through Exports Act of 2011 and before June 1, 2013; or
“(ii) on and after June 1, 2013, and before December 31, 2013, if trade authorities procedures are extended under subsection (c).”;
and

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking “before July 1, 2005” and inserting “on and after the date of the enactment of the Creating American Jobs through Exports Act of 2011 and before June 1, 2013”;
and

(ii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking “after June 30, 2005, and before July 1, 2007” and inserting “on or after June 1, 2013, and before December 31, 2013”; and

(II) in clause (ii), by striking “July 1, 2005” and inserting “June 1, 2013”;
(B) in paragraph (2), in the matter preceding subparagraph (A), by striking “April 1, 2005” and inserting “March 1, 2013”;

(C) in paragraph (3)—

(i) in subparagraph (A), in the matter preceding clause (i), by striking “June 1, 2005” and inserting “May 1, 2013”; and

(ii) in subparagraph (B)—

(I) by striking “June 1, 2005” and inserting “May 1, 2013”; and

(II) by striking “the date of enactment of this Act” and inserting “the date of the enactment of the Creating American Jobs through Exports Act of 2011”; and

(D) in paragraph (5), by striking “June 30, 2005” each place it appears and inserting “May 31, 2013”.

(b) TREATMENT OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT AND CERTAIN OTHER AGREEMENTS.—

Section 2106 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3806) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking the comma at the end and inserting “, or”;

(b) TREATMENT OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT AND CERTAIN OTHER AGREEMENTS.—

Section 2106 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3806) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking the comma at the end and inserting “, or”;

(b) TREATMENT OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT AND CERTAIN OTHER AGREEMENTS.—

Section 2106 of the Bipartisan Trade Promotion Authority Act of 2002 (19 U.S.C. 3806) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking the comma at the end and inserting “, or”;
(B) by striking paragraphs (2), (3), and

(4) and inserting the following:

“(2) establishes a Trans-Pacific Partnership,”;

and

(C) in the flush text at the end, by striking

“the date of the enactment of this Act” and in-
serting “the date of the enactment of the Cre-
ating American Jobs through Exports Act of
2011”; and

(2) in subsection (b)(2), in the matter pre-
ceding subparagraph (A), by striking “the enact-
ment of this Act” and inserting “the date of the en-
actment of the Creating American Jobs through Ex-
ports Act of 2011”.

SEC. 5003. MODIFICATION OF STANDARD FOR PROVISIONS
THAT MAY BE INCLUDED IN IMPLEMENTING
BILLS.

Section 2103(b) of the Bipartisan Trade Promotion
Authority Act of 2002 (19 U.S.C. 3803(b)), as amended
by section 5002(a), is further amended in paragraph
(3)(B) by striking clause (ii) and inserting the following:

“(ii) provisions that are necessary to
the implementation and enforcement of
such trade agreement.”.
A BILL

S. 1720

112TH CONGRESS

To provide American jobs through economic growth.

OCTOBER 18, 2011

Read the second time and placed on the calendar.

Calendar No. 203