

113TH CONGRESS
2^D SESSION

H. R. 5360

To enhance the competitiveness of American manufacturers and exports in the global marketplace by providing tax relief, regulatory relief, liability relief, and ensuring access to abundant and affordable supplies of energy, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2014

Mr. MULVANEY (for himself, Mr. HENSARLING, Mr. PRICE of Georgia, Mr. LAMBORN, Mr. CHABOT, Mr. LAMALFA, Mr. HULTGREN, Mr. ROE of Tennessee, Mr. McCLINTOCK, Mr. SCHWEIKERT, Mr. DeSANTIS, Mr. BROOKS of Alabama, Mr. JORDAN, Mr. HUIZENGA of Michigan, Mr. DUNCAN of Tennessee, and Mr. CRAWFORD) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, the Budget, the Judiciary, Rules, Natural Resources, Transportation and Infrastructure, and Science, Space, and Technology, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance the competitiveness of American manufacturers and exports in the global marketplace by providing tax relief, regulatory relief, liability relief, and ensuring access to abundant and affordable supplies of energy, and for other purposes.

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

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “American Renaissance in Manufacturing Act”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—CREATING A MORE COMPETITIVE TAX CODE

Sec. 1001. Dropping corporate tax rate.

Sec. 1002. Reduced recognition period for built-in gains of S corporations made permanent.

Sec. 1003. Permanent rule regarding basis adjustment to stock of S corporations making charitable contributions of property.

Sec. 1004. Expensing certain depreciable business assets for small business.

Sec. 1005. Research credit simplified and made permanent.

Sec. 1006. Bonus depreciation modified and made permanent.

Sec. 1007. Budgetary effects.

TITLE II—REINING IN JOB-KILLING WASHINGTON RED TAPE

Subtitle A—Regulations From the Executive in Need of Scrutiny Act

Sec. 2001. Purpose.

Sec. 2002. Congressional review of agency rulemaking.

Sec. 2003. Budgetary effects of rules subject to section 802 of title 5, United States Code.

Sec. 2004. Government Accountability Office study of rules.

Subtitle B—Energy Consumers Relief Act

Sec. 2201. Prohibition against finalizing certain energy-related rules that will cause significant adverse effects to the economy.

Sec. 2202. Reports and determinations prior to promulgating as final certain energy-related rules.

Sec. 2203. Definitions.

Sec. 2204. Prohibition on use of social cost of carbon in analysis.

Subtitle C—Electricity Security and Affordability Act

Sec. 2301. Standards of performance for new fossil fuel-fired electric utility generating units.

Sec. 2302. Congress to set effective date for standards of performance for existing, modified, and reconstructed fossil fuel-fired electric utility generating units.

Sec. 2303. Repeal of earlier rules and guidelines.

Sec. 2304. Definitions.

Subtitle D—Coal Residuals Reuse and Management

Sec. 2401. Management and disposal of coal combustion residuals.

Sec. 2402. 2000 regulatory determination.

- Sec. 2403. Technical assistance.
- Sec. 2404. Federal Power Act.

TITLE III—REDUCING FRIVOLOUS LEGAL COSTS

Subtitle A—Lawsuit Abuse Reduction Act

- Sec. 3101. Attorney accountability.

Subtitle B—Furthering Asbestos Claim Transparency in Bankruptcy

- Sec. 3201. Amendments.
- Sec. 3202. Effective date; application of amendments.

Subtitle C—Innovation Act

- Sec. 3301. Definitions.
- Sec. 3302. Patent infringement actions.
- Sec. 3303. Transparency of patent ownership.
- Sec. 3304. Customer-suit exception.
- Sec. 3305. Procedures and practices to implement recommendations of the Judicial Conference.
- Sec. 3306. Small business education, outreach, and information access.
- Sec. 3307. Studies on patent transactions, quality, and examination.
- Sec. 3308. Improvements and technical corrections to the Leahy-Smith America Invents Act.
- Sec. 3309. Effective date.

Subtitle D—Resolving Environmental and Grid Reliability Conflicts

- Sec. 3401. Amendments to the Federal Power Act.

TITLE IV—PRESERVING ACCESS TO ABUNDANT AND AFFORDABLE SOURCES OF ENERGY

Subtitle A—Northern Route Approval

- Sec. 4101. Findings.
- Sec. 4102. Keystone XL permit approval.
- Sec. 4103. Judicial review.
- Sec. 4104. American burying beetle.
- Sec. 4105. Right-of-way and temporary use permit.
- Sec. 4106. Permits for activities in navigable waters.
- Sec. 4107. Migratory Bird Treaty Act permit.
- Sec. 4108. Oil spill response plan disclosure.

Subtitle B—Natural Gas Pipeline Permitting Reform

- Sec. 4201. Regulatory approval of natural gas pipeline projects.

Subtitle C—North American Energy Infrastructure

- Sec. 4301. Finding.
- Sec. 4302. Authorization of certain energy infrastructure projects at the national boundary of the United States.
- Sec. 4303. Importation or exportation of natural gas to Canada and Mexico.
- Sec. 4304. Transmission of electric energy to Canada and Mexico.
- Sec. 4305. No Presidential permit required.
- Sec. 4306. Modifications to existing projects.

- Sec. 4307. Effective date; rulemaking deadlines.
 Sec. 4308. Definitions.

Subtitle D—Protecting States’ Rights To Promote American Energy Security
 Act

CHAPTER 1—STATE AUTHORITY FOR HYDRAULIC FRACTURING REGULATION

- Sec. 4411. State authority for hydraulic fracturing regulation.
 Sec. 4412. Government Accountability Office study.
 Sec. 4413. Tribal authority on trust land.

CHAPTER 2—EPA HYDRAULIC FRACTURING RESEARCH

- Sec. 4421. EPA hydraulic fracturing research.

CHAPTER 3—MISCELLANEOUS PROVISIONS

- Sec. 4431. Review of State activities.

Subtitle E—Offshore Energy and Jobs

CHAPTER 1—OUTER CONTINENTAL SHELF LEASING PROGRAM REFORMS

- Sec. 4511. Outer Continental Shelf leasing program reforms.
 Sec. 4512. Domestic oil and natural gas production goal.
 Sec. 4513. Development and submittal of new 5-year oil and gas leasing program.
 Sec. 4514. Rule of construction.

CHAPTER 2—DIRECTING THE PRESIDENT TO CONDUCT NEW OCS SALES IN
 VIRGINIA, SOUTH CAROLINA, AND CALIFORNIA

- Sec. 4521. Requirement to conduct proposed oil and gas Lease Sale 220 on the
 Outer Continental Shelf offshore Virginia.
 Sec. 4522. South Carolina lease sale.
 Sec. 4523. Southern California existing infrastructure lease sale.
 Sec. 4524. Environmental impact statement requirement.
 Sec. 4525. National defense.
 Sec. 4526. Eastern Gulf of Mexico not included.

CHAPTER 3—EQUITABLE SHARING OF OUTER CONTINENTAL SHELF
 REVENUES

- Sec. 4531. Disposition of Outer Continental Shelf revenues to coastal States.

CHAPTER 4—REORGANIZATION OF MINERALS MANAGEMENT AGENCIES OF
 THE DEPARTMENT OF THE INTERIOR

- Sec. 4541. Establishment of Under Secretary for Energy, Lands, and Minerals
 and Assistant Secretary of Ocean Energy and Safety.
 Sec. 4542. Bureau of Ocean Energy.
 Sec. 4543. Ocean Energy Safety Service.
 Sec. 4544. Office of Natural Resources revenue.
 Sec. 4545. Ethics and drug testing.
 Sec. 4546. Abolishment of Minerals Management Service.
 Sec. 4547. Conforming amendments to Executive Schedule pay rates.
 Sec. 4548. Outer Continental Shelf Energy Safety Advisory Board.
 Sec. 4549. Outer Continental Shelf inspection fees.

Sec. 4550. Prohibition on action based on National Ocean Policy developed under Executive Order No. 13547.

CHAPTER 5—UNITED STATES TERRITORIES

Sec. 4551. Application of Outer Continental Shelf Lands Act with respect to territories of the United States.

CHAPTER 6—MISCELLANEOUS PROVISIONS

Sec. 4561. Rules regarding distribution of revenues under Gulf of Mexico Energy Security Act of 2006.

Sec. 4562. Amount of distributed qualified outer Continental Shelf revenues.

CHAPTER 7—JUDICIAL REVIEW

Sec. 4571. Time for filing complaint.

Sec. 4572. District court deadline.

Sec. 4573. Ability to seek appellate review.

Sec. 4574. Limitation on scope of review and relief.

Sec. 4575. Legal fees.

Sec. 4576. Exclusion.

Sec. 4577. Definitions.

1 **TITLE I—CREATING A MORE**
 2 **COMPETITIVE TAX CODE**

3 **SEC. 1001. DROPPING CORPORATE TAX RATE.**

4 (a) IN GENERAL.—Subsection (b) of section 11 of the
 5 Internal Revenue Code of 1986 is amended to read as fol-
 6 lows:

7 “(b) AMOUNT OF TAX.—The amount of the tax im-
 8 posed by subsection (a) shall be 25 percent of taxable in-
 9 come.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Paragraphs (2)(B) and (6)(A)(ii) of section
 12 860E(e) of the Internal Revenue Code of 1986 are
 13 each amended by striking “highest rate of tax speci-
 14 fied in section 11(b)(1)” and inserting “rate of tax
 15 specified in section 11(b)”.

1 (2)(A) Part I of subchapter P of chapter 1 of
2 such Code is amended by striking section 1201 (and
3 by striking the item relating to such section in the
4 table of sections for such part).

5 (B) Section 12 of such Code is amended by
6 striking paragraphs (4) and (6), and by redesignig-
7 nating paragraph (5) as paragraph (4).

8 (C) Section 527(b) of such Code is amended—

9 (i) by striking paragraph (2),

10 (ii) by striking all that precedes “is hereby
11 imposed” and inserting:

12 “(b) TAX IMPOSED.—A tax”; and

13 (iii) by striking “highest”.

14 (D) Sections 594(a) of such Code is amended
15 by striking “taxes imposed by section 11 or
16 1201(a)” and inserting “tax imposed by section 11”.

17 (E) Section 691(c)(4) of such Code is amended
18 by striking “1201,”.

19 (F) Section 801(a) of such Code is amended—

20 (i) by striking paragraph (2), and

21 (ii) by striking all that precedes “is hereby
22 imposed” and inserting:

23 “(a) TAX IMPOSED.—A tax”.

24 (G) Section 831(d) of such Code is amended by
25 striking paragraph (1) and by redesignating para-

1 graphs (2) and (3) as paragraphs (1) and (2), re-
2 spectively.

3 (H) Sections 832(c)(5) and 834(b)(1)(D) of
4 such Code are each amended by striking “sec. 1201
5 and following,”.

6 (I) Section 852(b)(3)(A) of such Code is
7 amended by striking “section 1201(a)” and inserting
8 “section 11(b)”.

9 (J) Section 857(b)(3) of such Code is amend-
10 ed—

11 (i) by striking subparagraph (A) and re-
12 designating subparagraphs (B) through (F) as
13 subparagraphs (A) through (E), respectively,

14 (ii) in subparagraph (C), as so redesign-
15 ated—

16 (I) by striking “subparagraph (A)(ii)”
17 in clause (i) thereof and inserting “para-
18 graph (1)”, and

19 (II) by striking “the tax imposed by
20 subparagraph (A)(ii)” in clauses (ii) and
21 (iv) thereof and inserting “the tax imposed
22 by paragraph (1) on undistributed capital
23 gain”,

1 (iii) in subparagraph (E), as so redesignated,
2 nated, by striking “subparagraph (B) or (D)”
3 and inserting “subparagraph (A) or (C)”, and

4 (iv) by adding at the end the following new
5 subparagraph:

6 “(F) **UNDISTRIBUTED CAPITAL GAIN.**—
7 For purposes of this paragraph, the term ‘un-
8 distributed capital gain’ means the excess of the
9 net capital gain over the deduction for divi-
10 dends paid (as defined in section 561) deter-
11 mined with reference to capital gain dividends
12 only.”.

13 (K) Section 882(a)(1) of such Code is amended
14 by striking “, or 1201(a)”.

15 (L) Section 1374(b) of such Code is amended
16 by striking paragraph (4).

17 (M) Section 1381(b) of such Code is amended
18 by striking “taxes imposed by section 11 or 1201”
19 and inserting “tax imposed by section 11”.

20 (N) Sections 6425(c)(1)(A)(i) and
21 6655(g)(1)(A)(i) of such Code are each amended by
22 striking “or 1201(a)”.

23 (3)(A) Section 1445(e)(1) of such Code is
24 amended by striking “35 percent” and inserting “25
25 percent”.

1 (B) Section 1445(e)(2) of such Code is amend-
2 ed by striking “35 percent” and inserting “25 per-
3 cent”.

4 (C) Section 1445(e)(6) of such Code is amend-
5 ed by striking “35 percent” and inserting “25 per-
6 cent”.

7 (D) Section 1446(b)(2)(B) of such Code is
8 amended by striking “section 11(b)(1)” and insert-
9 ing “section 11(b)”.

10 (4) Section 852(b)(1) of such Code is amended
11 by striking the last sentence.

12 (5)(A) Part I of subchapter B of chapter 5 of
13 such Code is amended by striking section 1551 (and
14 by striking the item relating to such section in the
15 table of sections for such part).

16 (B) Section 535(c)(5) of such Code is amended
17 to read as follows:

18 “(5) CROSS REFERENCE.—For limitation on
19 credit provided in paragraph (2) or (3) in the case
20 of certain controlled corporations, see section
21 1561.”.

22 (6) Section 7874(e)(1)(B) of such Code is
23 amended by striking “section 11(b)(1)” and insert-
24 ing “section 11(b)”.

25 (c) EFFECTIVE DATE.—

1 (1) IN GENERAL.—Except as otherwise pro-
2 vided in this subsection, the amendments made by
3 this section shall apply to taxable years beginning
4 after December 31, 2014.

5 (2) WITHHOLDING.—The amendments made by
6 subsection (b)(3) shall apply to distributions made
7 after December 31, 2014.

8 (3) CERTAIN TRANSFERS.—The amendments
9 made by subsection (b)(5) shall apply to transfers
10 made after December 31, 2014.

11 **SEC. 1002. REDUCED RECOGNITION PERIOD FOR BUILT-IN**
12 **GAINS OF S CORPORATIONS MADE PERMA-**
13 **NENT.**

14 (a) IN GENERAL.—Paragraph (7) of section 1374(d)
15 of the Internal Revenue Code of 1986 is amended to read
16 as follows:

17 “(7) RECOGNITION PERIOD.—

18 “(A) IN GENERAL.—The term ‘recognition
19 period’ means the 5-year period beginning with
20 the 1st day of the 1st taxable year for which
21 the corporation was an S corporation. For pur-
22 poses of applying this section to any amount in-
23 cludible in income by reason of distributions to
24 shareholders pursuant to section 593(e), the

1 preceding sentence shall be applied without re-
2 gard to the phrase ‘5-year’.

3 “(B) **INSTALLMENT SALES.**—If an S cor-
4 poration sells an asset and reports the income
5 from the sale using the installment method
6 under section 453, the treatment of all pay-
7 ments received shall be governed by the provi-
8 sions of this paragraph applicable to the taxable
9 year in which such sale was made.”.

10 (b) **EFFECTIVE DATE.**—The amendment made by
11 this section shall apply to taxable years beginning after
12 December 31, 2013.

13 **SEC. 1003. PERMANENT RULE REGARDING BASIS ADJUST-**
14 **MENT TO STOCK OF S CORPORATIONS MAK-**
15 **ING CHARITABLE CONTRIBUTIONS OF PROP-**
16 **ERTY.**

17 (a) **IN GENERAL.**—Section 1367(a)(2) of the Internal
18 Revenue Code of 1986 is amended by striking the last sen-
19 tence.

20 (b) **EFFECTIVE DATE.**—The amendment made by
21 this section shall apply to contributions made in taxable
22 years beginning after December 31, 2013.

23 **SEC. 1004. EXPENSING CERTAIN DEPRECIABLE BUSINESS**
24 **ASSETS FOR SMALL BUSINESS.**

25 (a) **IN GENERAL.**—

1 (1) DOLLAR LIMITATION.—Paragraph (1) of
2 section 179(b) of the Internal Revenue Code of 1986
3 is amended by striking “shall not exceed—” and all
4 that follows and inserting “shall not exceed
5 \$500,000.”.

6 (2) REDUCTION IN LIMITATION.—Paragraph
7 (2) of section 179(b) of such Code is amended by
8 striking “exceeds—” and all that follows and insert-
9 ing “exceeds \$2,000,000.”.

10 (b) COMPUTER SOFTWARE.—Clause (ii) of section
11 179(d)(1)(A) of such Code is amended by striking “, to
12 which section 167 applies, and which is placed in service
13 in a taxable year beginning after 2002 and before 2014”
14 and inserting “and to which section 167 applies”.

15 (c) ELECTION.—Paragraph (2) of section 179(c) of
16 such Code is amended—

17 (1) by striking “may not be revoked” and all
18 that follows through “and before 2014”, and

19 (2) by striking “IRREVOCABLE” in the heading
20 thereof.

21 (d) AIR CONDITIONING AND HEATING UNITS.—
22 Paragraph (1) of section 179(d) of such Code is amended
23 by striking “and shall not include air conditioning or heat-
24 ing units”.

1 (e) QUALIFIED REAL PROPERTY.—Subsection (f) of
2 section 179 of such Code is amended—

3 (1) by striking “beginning in 2010, 2011, 2012,
4 or 2013” in paragraph (1), and

5 (2) by striking paragraphs (3) and (4).

6 (f) INFLATION ADJUSTMENT.—Subsection (b) of sec-
7 tion 179 of such Code is amended by adding at the end
8 the following new paragraph:

9 “(6) INFLATION ADJUSTMENT.—

10 “(A) IN GENERAL.—In the case of any
11 taxable year beginning after 2014, the dollar
12 amounts in paragraphs (1) and (2) shall each
13 be increased by an amount equal to—

14 “(i) such dollar amount, multiplied by

15 “(ii) the cost-of-living adjustment de-
16 termined under section 1(c)(2)(A) for such
17 calendar year, determined by substituting
18 ‘calendar year 2013’ for ‘calendar year
19 2012’ in clause (ii) thereof.

20 “(B) ROUNDING.—The amount of any in-
21 crease under subparagraph (A) shall be round-
22 ed to the nearest multiple of \$10,000.”.

23 (g) EFFECTIVE DATE.—The amendments made by
24 this section shall apply to taxable years beginning after
25 December 31, 2013.

1 **SEC. 1005. RESEARCH CREDIT SIMPLIFIED AND MADE PER-**
2 **MANENT.**

3 (a) IN GENERAL.—Subsection (a) of section 41 of the
4 Internal Revenue Code of 1986 is amended to read as fol-
5 lows:

6 “(a) IN GENERAL.—For purposes of section 38, the
7 research credit determined under this section for the tax-
8 able year shall be an amount equal to the sum of—

9 “(1) 20 percent of so much of the qualified re-
10 search expenses for the taxable year as exceeds 50
11 percent of the average qualified research expenses
12 for the 3 taxable years preceding the taxable year
13 for which the credit is being determined,

14 “(2) 20 percent of so much of the basic re-
15 search payments for the taxable year as exceeds 50
16 percent of the average basic research payments for
17 the 3 taxable years preceding the taxable year for
18 which the credit is being determined, plus

19 “(3) 20 percent of the amounts paid or in-
20 curred by the taxpayer in carrying on any trade or
21 business of the taxpayer during the taxable year (in-
22 cluding as contributions) to an energy research con-
23 sortium for energy research.”.

24 (b) REPEAL OF TERMINATION.—Section 41 of such
25 Code is amended by striking subsection (h).

26 (c) CONFORMING AMENDMENTS.—

1 (1) Subsection (c) of section 41 of such Code
2 is amended to read as follows:

3 “(c) DETERMINATION OF AVERAGE RESEARCH EX-
4 PENSES FOR PRIOR YEARS.—

5 “(1) SPECIAL RULE IN CASE OF NO QUALIFIED
6 RESEARCH EXPENDITURES IN ANY OF 3 PRECEDING
7 TAXABLE YEARS.—In any case in which the taxpayer
8 has no qualified research expenses in any one of the
9 3 taxable years preceding the taxable year for which
10 the credit is being determined, the amount deter-
11 mined under subsection (a)(1) for such taxable year
12 shall be equal to 10 percent of the qualified research
13 expenses for the taxable year.

14 “(2) CONSISTENT TREATMENT OF EX-
15 PENSES.—

16 “(A) IN GENERAL.—Notwithstanding
17 whether the period for filing a claim for credit
18 or refund has expired for any taxable year
19 taken into account in determining the average
20 qualified research expenses, or average basic re-
21 search payments, taken into account under sub-
22 section (a), the qualified research expenses and
23 basic research payments taken into account in
24 determining such averages shall be determined
25 on a basis consistent with the determination of

1 qualified research expenses and basic research
2 payments, respectively, for the credit year.

3 “(B) PREVENTION OF DISTORTIONS.—The
4 Secretary may prescribe regulations to prevent
5 distortions in calculating a taxpayer’s qualified
6 research expenses or basic research payments
7 caused by a change in accounting methods used
8 by such taxpayer between the current year and
9 a year taken into account in determining the
10 average qualified research expenses or average
11 basic research payments taken into account
12 under subsection (a).”.

13 (2) Section 41(e) of such Code is amended—

14 (A) by striking all that precedes paragraph
15 (6) and inserting the following:

16 “(e) BASIC RESEARCH PAYMENTS.—For purposes of
17 this section—

18 “(1) IN GENERAL.—The term ‘basic research
19 payment’ means, with respect to any taxable year,
20 any amount paid in cash during such taxable year
21 by a corporation to any qualified organization for
22 basic research but only if—

23 “(A) such payment is pursuant to a writ-
24 ten agreement between such corporation and
25 such qualified organization, and

1 “(B) such basic research is to be per-
2 formed by such qualified organization.

3 “(2) EXCEPTION TO REQUIREMENT THAT RE-
4 SEARCH BE PERFORMED BY THE ORGANIZATION.—
5 In the case of a qualified organization described in
6 subparagraph (C) or (D) of paragraph (3), subpara-
7 graph (B) of paragraph (1) shall not apply.”,

8 (B) by redesignating paragraphs (6) and
9 (7) as paragraphs (3) and (4), respectively, and
10 (C) in paragraph (4) as so redesignated,
11 by striking subparagraphs (B) and (C) and by
12 redesignating subparagraphs (D) and (E) as
13 subparagraphs (B) and (C), respectively.

14 (3) Section 41(f)(3) of such Code is amended—

15 (A)(i) by striking “, and the gross re-
16 ceipts” in subparagraph (A)(i) and all that fol-
17 lows through “determined under clause (iii)”,

18 (ii) by striking clause (iii) of subparagraph
19 (A) and redesignating clauses (iv), (v), and (vi),
20 thereof, as clauses (iii), (iv), and (v), respec-
21 tively,

22 (iii) by striking “and (iv)” each place it
23 appears in subparagraph (A)(iv) (as so redesi-
24 gnated) and inserting “and (iii)”,

1 (iv) by striking subclause (IV) of subpara-
2 graph (A)(iv) (as so redesignated), by striking
3 “, and” at the end of subparagraph (A)(iv)(III)
4 (as so redesignated) and inserting a period, and
5 by adding “and” at the end of subparagraph
6 (A)(iv)(II) (as so redesignated),

7 (v) by striking “(A)(vi)” in subparagraph
8 (B) and inserting “(A)(v)”, and

9 (vi) by striking “(A)(iv)(II)” in subpara-
10 graph (B)(i)(II) and inserting “(A)(iii)(II)”,

11 (B) by striking “, and the gross receipts of
12 the predecessor,” in subparagraph (A)(iv)(II)
13 (as so redesignated),

14 (C) by striking “, and the gross receipts
15 of,” in subparagraph (B),

16 (D) by striking “, or gross receipts of,” in
17 subparagraph (B)(i)(I), and

18 (E) by striking subparagraph (C).

19 (d) EFFECTIVE DATE.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (2), the amendments made by this section
22 shall apply to taxable years beginning after Decem-
23 ber 31, 2013.

1 (2) SUBSECTION (b).—The amendment made
2 by subsection (b) shall apply to amounts paid or in-
3 curred after December 31, 2013.

4 **SEC. 1006. BONUS DEPRECIATION MODIFIED AND MADE**
5 **PERMANENT.**

6 (a) MADE PERMANENT; INCLUSION OF QUALIFIED
7 RETAIL IMPROVEMENT PROPERTY.—Section 168(k)(2) of
8 the Internal Revenue Code of 1986 is amended to read
9 as follows:

10 “(2) QUALIFIED PROPERTY.—For purposes of
11 this subsection—

12 “(A) IN GENERAL.—The term ‘qualified
13 property’ means property—

14 “(i)(I) to which this section applies
15 which has a recovery period of 20 years or
16 less,

17 “(II) which is computer software (as
18 defined in section 167(f)(1)(B)) for which
19 a deduction is allowable under section
20 167(a) without regard to this subsection,

21 “(III) which is water utility property,

22 “(IV) which is qualified leasehold im-
23 provement property, or

24 “(V) which is qualified retail improve-
25 ment property, and

1 “(ii) the original use of which com-
2 mences with the taxpayer.

3 “(B) EXCEPTION FOR ALTERNATIVE DE-
4 PRECIATION PROPERTY.—The term ‘qualified
5 property’ shall not include any property to
6 which the alternative depreciation system under
7 subsection (g) applies, determined—

8 “(i) without regard to paragraph (7)
9 of subsection (g) (relating to election to
10 have system apply), and

11 “(ii) after application of section
12 280F(b) (relating to listed property with
13 limited business use).

14 “(C) SPECIAL RULES.—

15 “(i) SALE-LEASEBACKS.—For pur-
16 poses of clause (ii) and subparagraph
17 (A)(ii), if property is—

18 “(I) originally placed in service
19 by a person, and

20 “(II) sold and leased back by
21 such person within 3 months after the
22 date such property was originally
23 placed in service,

24 such property shall be treated as originally
25 placed in service not earlier than the date

1 on which such property is used under the
2 leaseback referred to in subclause (II).

3 “(ii) SYNDICATION.—For purposes of
4 subparagraph (A)(ii), if—

5 “(I) property is originally placed
6 in service by the lessor of such prop-
7 erty,

8 “(II) such property is sold by
9 such lessor or any subsequent pur-
10 chaser within 3 months after the date
11 such property was originally placed in
12 service (or, in the case of multiple
13 units of property subject to the same
14 lease, within 3 months after the date
15 the final unit is placed in service, so
16 long as the period between the time
17 the first unit is placed in service and
18 the time the last unit is placed in
19 service does not exceed 12 months),
20 and

21 “(III) the user of such property
22 after the last sale during such 3-
23 month period remains the same as
24 when such property was originally
25 placed in service,

1 such property shall be treated as originally
2 placed in service not earlier than the date
3 of such last sale.

4 “(D) COORDINATION WITH SECTION
5 280F.—For purposes of section 280F—

6 “(i) AUTOMOBILES.—In the case of a
7 passenger automobile (as defined in section
8 280F(d)(5)) which is qualified property,
9 the Secretary shall increase the limitation
10 under section 280F(a)(1)(A)(i) by \$8,000.

11 “(ii) LISTED PROPERTY.—The deduc-
12 tion allowable under paragraph (1) shall be
13 taken into account in computing any re-
14 capture amount under section 280F(b)(2).

15 “(iii) INFLATION ADJUSTMENT.—In
16 the case of any taxable year beginning in
17 a calendar year after 2014, the \$8,000
18 amount in clause (i) shall be increased by
19 an amount equal to—

20 “(I) such dollar amount, multi-
21 plied by

22 “(II) the automobile price infla-
23 tion adjustment determined under sec-
24 tion 280F(d)(7)(B)(i) for the calendar
25 year in which such taxable year begins

1 by substituting ‘2013’ for ‘1987’ in
2 subclause (II) thereof.

3 If any increase under the preceding sen-
4 tence is not a multiple of \$100, such in-
5 crease shall be rounded to the nearest mul-
6 tiple of \$100.

7 “(E) DEDUCTION ALLOWED IN COMPUTING
8 MINIMUM TAX.—For purposes of determining
9 alternative minimum taxable income under sec-
10 tion 55, the deduction under section 167 for
11 qualified property shall be determined without
12 regard to any adjustment under section 56.”.

13 (b) EXPANSION OF ELECTION TO ACCELERATE AMT
14 CREDITS IN LIEU OF BONUS DEPRECIATION.—Section
15 168(k)(4) of such Code is amended to read as follows:

16 “(4) ELECTION TO ACCELERATE AMT CREDITS
17 IN LIEU OF BONUS DEPRECIATION.—

18 “(A) IN GENERAL.—If a corporation elects
19 to have this paragraph apply for any taxable
20 year—

21 “(i) paragraphs (1)(A), (2)(D)(i), and
22 (5)(A)(i) shall not apply for such taxable
23 year,

24 “(ii) the applicable depreciation meth-
25 od used under this section with respect to

1 any qualified property shall be the straight
2 line method, and

3 “(iii) the limitation imposed by section
4 53(c) for such taxable year shall be in-
5 creased by the bonus depreciation amount
6 which is determined for such taxable year
7 under subparagraph (B).

8 “(B) BONUS DEPRECIATION AMOUNT.—

9 For purposes of this paragraph—

10 “(i) IN GENERAL.—The bonus depre-
11 ciation amount for any taxable year is an
12 amount equal to 20 percent of the excess
13 (if any) of—

14 “(I) the aggregate amount of de-
15 preciation which would be allowed
16 under this section for qualified prop-
17 erty placed in service by the taxpayer
18 during such taxable year if paragraph
19 (1) applied to all such property, over

20 “(II) the aggregate amount of
21 depreciation which would be allowed
22 under this section for qualified prop-
23 erty placed in service by the taxpayer
24 during such taxable year if paragraph

1 (1) did not apply to any such prop-
2 erty.

3 The aggregate amounts determined under
4 subclauses (I) and (II) shall be determined
5 without regard to any election made under
6 subsection (b)(2)(D), (b)(3)(D), or (g)(7)
7 and without regard to subparagraph
8 (A)(ii).

9 “(ii) LIMITATION.—The bonus depre-
10 ciation amount for any taxable year shall
11 not exceed the lesser of—

12 “(I) 50 percent of the minimum
13 tax credit under section 53(b) for the
14 first taxable year ending after Decem-
15 ber 31, 2013, or

16 “(II) the minimum tax credit
17 under section 53(b) for such taxable
18 year determined by taking into ac-
19 count only the adjusted net minimum
20 tax for taxable years ending before
21 January 1, 2014 (determined by
22 treating credits as allowed on a first-
23 in, first-out basis).

24 “(iii) AGGREGATION RULE.—All cor-
25 porations which are treated as a single em-

1 ployer under section 52(a) shall be treat-
2 ed—

3 “(I) as 1 taxpayer for purposes
4 of this paragraph, and

5 “(II) as having elected the appli-
6 cation of this paragraph if any such
7 corporation so elects.

8 “(C) CREDIT REFUNDABLE.—For pur-
9 poses of section 6401(b), the aggregate increase
10 in the credits allowable under part IV of sub-
11 chapter A for any taxable year resulting from
12 the application of this paragraph shall be treat-
13 ed as allowed under subpart C of such part
14 (and not any other subpart).

15 “(D) OTHER RULES.—

16 “(i) ELECTION.—Any election under
17 this paragraph may be revoked only with
18 the consent of the Secretary.

19 “(ii) PARTNERSHIPS WITH ELECTING
20 PARTNERS.—In the case of a corporation
21 which is a partner in a partnership and
22 which makes an election under subpara-
23 graph (A) for the taxable year, for pur-
24 poses of determining such corporation’s

1 distributive share of partnership items
2 under section 702 for such taxable year—

3 “(I) paragraphs (1)(A),
4 (2)(D)(i), and (5)(A)(i) shall not
5 apply, and

6 “(II) the applicable depreciation
7 method used under this section with
8 respect to any qualified property shall
9 be the straight line method.

10 “(iii) CERTAIN PARTNERSHIPS.—In
11 the case of a partnership in which more
12 than 50 percent of the capital and profits
13 interests are owned (directly or indirectly)
14 at all times during the taxable year by 1
15 corporation (or by corporations treated as
16 1 taxpayer under subparagraph (B)(iii)),
17 each partner shall compute its bonus de-
18 preciation amount under clause (i) of sub-
19 paragraph (B) by taking into account its
20 distributive share of the amounts deter-
21 mined by the partnership under subclauses
22 (I) and (II) of such clause for the taxable
23 year of the partnership ending with or
24 within the taxable year of the partner.”.

1 (c) SPECIAL RULES FOR TREES AND VINES BEARING
2 FRUITS AND NUTS.—Section 168(k) of such Code is
3 amended—

4 (1) by striking paragraph (5), and

5 (2) by inserting after paragraph (4) the fol-
6 lowing new paragraph:

7 “(5) SPECIAL RULES FOR TREES AND VINES
8 BEARING FRUITS AND NUTS.—

9 “(A) IN GENERAL.—In the case of any
10 tree or vine bearing fruits or nuts which is
11 planted, or is grafted to a plant that has al-
12 ready been planted, by the taxpayer in the ordi-
13 nary course of the taxpayer’s farming business
14 (as defined in section 263A(e)(4))—

15 “(i) a depreciation deduction equal to
16 50 percent of the adjusted basis of such
17 tree or vine shall be allowed under section
18 167(a) for the taxable year in which such
19 tree or vine is so planted or grafted, and

20 “(ii) the adjusted basis of such tree or
21 vine shall be reduced by the amount of
22 such deduction.

23 “(B) ELECTION OUT.—If a taxpayer
24 makes an election under this subparagraph for
25 any taxable year, this paragraph shall not apply

1 to any tree or vine planted or grafted during
2 such taxable year. An election under this sub-
3 paragraph may be revoked only with the con-
4 sent of the Secretary.

5 “(C) ADDITIONAL DEPRECIATION MAY BE
6 CLAIMED ONLY ONCE.—If this paragraph ap-
7 plies to any tree or vine, such tree or vine shall
8 not be treated as qualified property in the tax-
9 able year in which placed in service.

10 “(D) COORDINATION WITH ELECTION TO
11 ACCELERATE AMT CREDITS.—If a corporation
12 makes an election under paragraph (4) for any
13 taxable year, the amount under paragraph
14 (4)(B)(i)(I) for such taxable year shall be in-
15 creased by the amount determined under sub-
16 paragraph (A)(i) for such taxable year.

17 “(E) DEDUCTION ALLOWED IN COMPUTING
18 MINIMUM TAX.—Rules similar to the rules of
19 paragraph (2)(E) shall apply for purposes of
20 this paragraph.”.

21 (d) CONFORMING AMENDMENTS.—

22 (1) Section 168(e)(8) of such Code is amended
23 by striking subparagraph (D).

24 (2) Section 168(k) of such Code is amended by
25 adding at the end the following new paragraph:

1 “(6) ELECTION OUT.—If a taxpayer makes an
2 election under this paragraph with respect to any
3 class of property for any taxable year, this sub-
4 section shall not apply to all property in such class
5 placed in service (or, in the case of paragraph (5),
6 planted or grafted) during such taxable year. An
7 election under this paragraph may be revoked only
8 with the consent of the Secretary.”.

9 (3) Section 168(l)(5) of such Code is amended
10 by striking “section 168(k)(2)(G)” and inserting
11 “section 168(k)(2)(E)”.

12 (4) Section 263A(e) of such Code is amended
13 by adding at the end the following new paragraph:

14 “(7) COORDINATION WITH SECTION
15 168(k)(5).—This section shall not apply to any
16 amount allowable as a deduction by reason of section
17 168(k)(5) (relating to special rules for trees and
18 vines bearing fruits and nuts).”.

19 (5) Section 460(c)(6)(B) of such Code is
20 amended by striking “which—” and all that follows
21 and inserting “which has a recovery period of 7
22 years or less.”.

23 (6) Section 168(k) of such Code is amended by
24 striking “ACQUIRED AFTER DECEMBER 31, 2007,

1 AND BEFORE JANUARY 1, 2014” in the heading
2 thereof.

3 (e) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as otherwise pro-
5 vided in this subsection, the amendments made by
6 this section shall apply to property placed in service
7 after December 31, 2013.

8 (2) EXPANSION OF ELECTION TO ACCELERATE
9 AMT CREDITS IN LIEU OF BONUS DEPRECIATION.—

10 (A) IN GENERAL.—The amendment made
11 by subsection (b) (other than so much of such
12 amendment as relates to section
13 168(k)(4)(D)(iii) of such Code, as added by
14 such amendment) shall apply to taxable years
15 ending after December 31, 2013.

16 (B) TRANSITIONAL RULE.—In the case of
17 a taxable year beginning before January 1,
18 2014, and ending after December 31, 2013, the
19 bonus depreciation amount determined under
20 section 168(k)(4) of such Code for such year
21 shall be the sum of—

22 (i) such amount determined without
23 regard to the amendments made by this
24 section and—

1 (I) by taking into account only
2 property placed in service before Jan-
3 uary 1, 2014, and

4 (II) by multiplying the limitation
5 under section 168(k)(4)(C)(ii) of such
6 Code (determined without regard to
7 the amendments made by this section)
8 by a fraction the numerator of which
9 is the number of days in the taxable
10 year before January 1, 2014, and the
11 denominator of which is the number
12 of days in the taxable year, and

13 (ii) such amount determined after
14 taking into account the amendments made
15 by this section and—

16 (I) by taking into account only
17 property placed in service after De-
18 cember 31, 2013, and

19 (II) by multiplying the limitation
20 under section 168(k)(4)(B)(ii) of such
21 Code (as amended by this section) by
22 a fraction the numerator of which is
23 the number of days in the taxable
24 year after December 31, 2013, and

1 the denominator of which is the num-
2 ber of days in the taxable year.

3 (3) SPECIAL RULES FOR CERTAIN TREES AND
4 VINES.—The amendment made by subsection (c)(2)
5 shall apply to trees and vines planted or grafted
6 after December 31, 2013.

7 **SEC. 1007. BUDGETARY EFFECTS.**

8 (a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The
9 budgetary effects of this title shall not be entered on either
10 PAYGO scorecard maintained pursuant to section 4(d) of
11 the Statutory Pay-As-You-Go Act of 2010.

12 (b) SENATE PAYGO SCORECARDS.—The budgetary
13 effects of this title shall not be entered on any PAYGO
14 scorecard maintained for purposes of section 201 of S.
15 Con. Res. 21 (110th Congress).

16 **TITLE II—REINING IN JOB-KILL-**
17 **ING WASHINGTON RED TAPE**

18 **Subtitle A—Regulations From the**
19 **Executive in Need of Scrutiny Act**

20 **SEC. 2001. PURPOSE.**

21 The purpose of this title is to increase accountability
22 for and transparency in the Federal regulatory process.
23 Section 1 of article I of the United States Constitution
24 grants all legislative powers to Congress. Over time, Con-
25 gress has excessively delegated its constitutional charge

1 while failing to conduct appropriate oversight and retain
 2 accountability for the content of the laws it passes. By
 3 requiring a vote in Congress, this subtitle will result in
 4 more carefully drafted and detailed legislation, an im-
 5 proved regulatory process, and a legislative branch that
 6 is truly accountable to the American people for the laws
 7 imposed upon them. Moreover, as a tax on carbon emis-
 8 sions increases energy costs on consumers, reduces eco-
 9 nomic growth and is therefore detrimental to individuals,
 10 families and businesses, this subtitle includes in the defini-
 11 tion of a major rule, any rule that implements or provides
 12 for the imposition or collection of a tax on carbon emis-
 13 sions.

14 **SEC. 2002. CONGRESSIONAL REVIEW OF AGENCY RULE-**
 15 **MAKING.**

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

18 **“CHAPTER 8—CONGRESSIONAL REVIEW**
 19 **OF AGENCY RULEMAKING**

“Sec.

“801. Congressional review.

“802. Congressional approval procedure for major rules.

“803. Congressional disapproval procedure for nonmajor rules.

“804. Definitions.

“805. Judicial review.

“806. Exemption for monetary policy.

“807. Effective date of certain rules.

1 **“§ 801. Congressional review**

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

6 “(i) a copy of the rule;

7 “(ii) a concise general statement relating to the
8 rule;

9 “(iii) a classification of the rule as a major or
10 nonmajor rule, including an explanation of the clas-
11 sification specifically addressing each criteria for a
12 major rule contained within clauses (i) through (iii)
13 of section 804(2)(A) or within section 804(2)(B);

14 “(iv) a list of any other related regulatory ac-
15 tions taken by or that will be taken by the Federal
16 agency promulgating the rule that are intended to
17 implement the same statutory provision or regu-
18 latory objective as well as the individual and aggre-
19 gate economic effects of those actions;

20 “(v) a list of any other related regulatory ac-
21 tions taken by or that will be taken by any other
22 Federal agency with authority to implement the
23 same statutory provision or regulatory objective that
24 are intended to implement such provision or objec-
25 tive, of which the Federal agency promulgating the

1 rule is aware, as well as the individual and aggregate
2 economic effects of those actions; and

3 “(vi) the proposed effective date of the rule.

4 “(B) On the date of the submission of the report
5 under subparagraph (A), the Federal agency promulgating
6 the rule shall submit to the Comptroller General and make
7 available to each House of Congress—

8 “(i) a complete copy of the cost-benefit analysis
9 of the rule, if any, including an analysis of any jobs
10 added or lost, differentiating between public and private
11 sector jobs;

12 “(ii) the agency’s actions pursuant to sections
13 603, 604, 605, 607, and 609 of this title;

14 “(iii) the agency’s actions pursuant to sections
15 202, 203, 204, and 205 of the Unfunded Mandates
16 Reform Act of 1995; and

17 “(iv) any other relevant information or requirements
18 under any other Act and any relevant Executive
19 orders.

20 “(C) Upon receipt of a report submitted under sub-
21 paragraph (A), each House shall provide copies of the re-
22 port to the chairman and ranking member of each stand-
23 ing committee with jurisdiction under the rules of the
24 House of Representatives or the Senate to report a bill

1 to amend the provision of law under which the rule is
2 issued.

3 “(2)(A) The Comptroller General shall provide a re-
4 port on each major rule to the committees of jurisdiction
5 by the end of 15 calendar days after the submission or
6 publication date. The report of the Comptroller General
7 shall include an assessment of the agency’s compliance
8 with procedural steps required by paragraph (1)(B) and
9 an assessment of whether the major rule imposes any new
10 limits or mandates on private-sector activity.

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

14 “(3) A major rule relating to a report submitted
15 under paragraph (1) shall take effect upon enactment of
16 a joint resolution of approval described in section 802 or
17 as provided for in the rule following enactment of a joint
18 resolution of approval described in section 802, whichever
19 is later.

20 “(4) A nonmajor rule shall take effect as provided
21 by section 803 after submission to Congress under para-
22 graph (1).

23 “(5) If a joint resolution of approval relating to a
24 major rule is not enacted within the period provided in
25 subsection (b)(2), then a joint resolution of approval relat-

1 ing to the same rule may not be considered under this
2 chapter in the same Congress by either the House of Rep-
3 resentatives or the Senate.

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

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

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

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

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

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

5 “(C) necessary for national security; or

6 “(D) issued pursuant to any statute imple-
7 menting an international trade agreement.

8 “(3) An exercise by the President of the authority
9 under this subsection shall have no effect on the proce-
10 dures under section 802.

11 “(d)(1) In addition to the opportunity for review oth-
12 erwise provided under this chapter, in the case of any rule
13 for which a report was submitted in accordance with sub-
14 section (a)(1)(A) during the period beginning on the date
15 occurring—

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

18 “(B) in the case of the House of Representa-
19 tives, 60 legislative days,

20 before the date the Congress is scheduled to adjourn a
21 session of Congress through the date on which the same
22 or succeeding Congress first convenes its next session, sec-
23 tions 802 and 803 shall apply to such rule in the suc-
24 ceeding session of Congress.

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

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

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

8 “(II) in the case of the House of Rep-
9 resentatives, the 15th legislative day,
10 after the succeeding session of Congress first con-
11 venes; and

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

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

18 “(3) A rule described under paragraph (1) shall take
19 effect as otherwise provided by law (including other sub-
20 sections of this section).

21 **“§ 802. Congressional approval procedure for major**
22 **rules**

23 “(a)(1) For purposes of this section, the term ‘joint
24 resolution’ means only a joint resolution addressing a re-

1 port classifying a rule as major pursuant to section
2 801(a)(1)(A)(iii) that—

3 “(A) bears no preamble;

4 “(B) bears the following title (with blanks filled
5 as appropriate): ‘Approving the rule submitted by
6 _____ relating to _____.’;

7 “(C) includes after its resolving clause only the
8 following (with blanks filled as appropriate): ‘That
9 Congress approves the rule submitted by _____ re-
10 lating to _____.’; and

11 “(D) is introduced pursuant to paragraph (2).

12 “(2) After a House of Congress receives a report
13 classifying a rule as major pursuant to section
14 801(a)(1)(A)(iii), the majority leader of that House (or
15 his or her respective designee) shall introduce (by request,
16 if appropriate) a joint resolution described in paragraph
17 (1)—

18 “(A) in the case of the House of Representa-
19 tives, within three legislative days; and

20 “(B) in the case of the Senate, within three ses-
21 sion days.

22 “(3) A joint resolution described in paragraph (1)
23 shall not be subject to amendment at any stage of pro-
24 ceeding.

1 “(b) A joint resolution described in subsection (a)
2 shall be referred in each House of Congress to the commit-
3 tees having jurisdiction over the provision of law under
4 which the rule is issued.

5 “(c) In the Senate, if the committee or committees
6 to which a joint resolution described in subsection (a) has
7 been referred have not reported it at the end of 15 session
8 days after its introduction, such committee or committees
9 shall be automatically discharged from further consider-
10 ation of the resolution and it shall be placed on the cal-
11 endar. A vote on final passage of the resolution shall be
12 taken on or before the close of the 15th session day after
13 the resolution is reported by the committee or committees
14 to which it was referred, or after such committee or com-
15 mittees have been discharged from further consideration
16 of the resolution.

17 “(d)(1) In the Senate, when the committee or com-
18 mittees to which a joint resolution is referred have re-
19 ported, or when a committee or committees are discharged
20 (under subsection (c)) from further consideration of a
21 joint resolution described in subsection (a), it is at any
22 time thereafter in order (even though a previous motion
23 to the same effect has been disagreed to) for a motion
24 to proceed to the consideration of the joint resolution, and
25 all points of order against the joint resolution (and against

1 consideration of the joint resolution) are waived. The mo-
2 tion is not subject to amendment, or to a motion to post-
3 pone, or to a motion to proceed to the consideration of
4 other business. A motion to reconsider the vote by which
5 the motion is agreed to or disagreed to shall not be in
6 order. If a motion to proceed to the consideration of the
7 joint resolution is agreed to, the joint resolution shall re-
8 main the unfinished business of the Senate until disposed
9 of.

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

19 “(3) In the Senate, immediately following the conclu-
20 sion of the debate on a joint resolution described in sub-
21 section (a), and a single quorum call at the conclusion of
22 the debate if requested in accordance with the rules of the
23 Senate, the vote on final passage of the joint resolution
24 shall occur.

1 “(4) Appeals from the decisions of the Chair relating
2 to the application of the rules of the Senate to the proce-
3 dure relating to a joint resolution described in subsection
4 (a) shall be decided without debate.

5 “(e) In the House of Representatives, if any com-
6 mittee to which a joint resolution described in subsection
7 (a) has been referred has not reported it to the House
8 at the end of 15 legislative days after its introduction,
9 such committee shall be discharged from further consider-
10 ation of the joint resolution, and it shall be placed on the
11 appropriate calendar. On the second and fourth Thursdays
12 of each month it shall be in order at any time for the
13 Speaker to recognize a Member who favors passage of a
14 joint resolution that has appeared on the calendar for at
15 least 5 legislative days to call up that joint resolution for
16 immediate consideration in the House without intervention
17 of any point of order. When so called up a joint resolution
18 shall be considered as read and shall be debatable for 1
19 hour equally divided and controlled by the proponent and
20 an opponent, and the previous question shall be considered
21 as ordered to its passage without intervening motion. It
22 shall not be in order to reconsider the vote on passage.
23 If a vote on final passage of the joint resolution has not
24 been taken by the third Thursday on which the Speaker

1 may recognize a Member under this subsection, such vote
2 shall be taken on that day.

3 “(f)(1) If, before passing a joint resolution described
4 in subsection (a), one House receives from the other a
5 joint resolution having the same text, then—

6 “(A) the joint resolution of the other House
7 shall not be referred to a committee; and

8 “(B) the procedure in the receiving House shall
9 be the same as if no joint resolution had been re-
10 ceived from the other House until the vote on pas-
11 sage, when the joint resolution received from the
12 other House shall supplant the joint resolution of
13 the receiving House.

14 “(2) This subsection shall not apply to the House of
15 Representatives if the joint resolution received from the
16 Senate is a revenue measure.

17 “(g) If either House has not taken a vote on final
18 passage of the joint resolution by the last day of the period
19 described in section 801(b)(2), then such vote shall be
20 taken on that day.

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

23 “(1) as an exercise of the rulemaking power of
24 the Senate and House of Representatives, respec-
25 tively, and as such is deemed to be part of the rules

1 of each House, respectively, but applicable only with
2 respect to the procedure to be followed in that
3 House in the case of a joint resolution described in
4 subsection (a) and superseding other rules only
5 where explicitly so; and

6 “(2) with full recognition of the Constitutional
7 right of either House to change the rules (so far as
8 they relate to the procedure of that House) at any
9 time, in the same manner and to the same extent as
10 in the case of any other rule of that House.

11 **“§ 803. Congressional disapproval procedure for**
12 **nonmajor rules**

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

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

4 “(c) In the Senate, if the committee to which is re-
5 ferred a joint resolution described in subsection (a) has
6 not reported such joint resolution (or an identical joint
7 resolution) at the end of 15 session days after the date
8 of introduction of the joint resolution, such committee may
9 be discharged from further consideration of such joint res-
10 olution upon a petition supported in writing by 30 Mem-
11 bers of the Senate, and such joint resolution shall be
12 placed on the calendar.

13 “(d)(1) In the Senate, when the committee to which
14 a joint resolution is referred has reported, or when a com-
15 mittee is discharged (under subsection (c)) from further
16 consideration of a joint resolution described in subsection
17 (a), it is at any time thereafter in order (even though a
18 previous motion to the same effect has been disagreed to)
19 for a motion to proceed to the consideration of the joint
20 resolution, and all points of order against the joint resolu-
21 tion (and against consideration of the joint resolution) are
22 waived. The motion is not subject to amendment, or to
23 a motion to postpone, or to a motion to proceed to the
24 consideration of other business. A motion to reconsider the
25 vote by which the motion is agreed to or disagreed to shall

1 not be in order. If a motion to proceed to the consideration
2 of the joint resolution is agreed to, the joint resolution
3 shall remain the unfinished business of the Senate until
4 disposed of.

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

14 “(3) In the Senate, immediately following the conclu-
15 sion of the debate on a joint resolution described in sub-
16 section (a), and a single quorum call at the conclusion of
17 the debate if requested in accordance with the rules of the
18 Senate, the vote on final passage of the joint resolution
19 shall occur.

20 “(4) Appeals from the decisions of the Chair relating
21 to the application of the rules of the Senate to the proce-
22 dure relating to a joint resolution described in subsection
23 (a) shall be decided without debate.

1 “(e) In the Senate the procedure specified in sub-
2 section (e) or (d) shall not apply to the consideration of
3 a joint resolution respecting a nonmajor rule—

4 “(1) after the expiration of the 60 session days
5 beginning with the applicable submission or publica-
6 tion date, or

7 “(2) if the report under section 801(a)(1)(A)
8 was submitted during the period referred to in sec-
9 tion 801(d)(1), after the expiration of the 60 session
10 days beginning on the 15th session day after the
11 succeeding session of Congress first convenes.

12 “(f) If, before the passage by one House of a joint
13 resolution of that House described in subsection (a), that
14 House receives from the other House a joint resolution
15 described in subsection (a), then the following procedures
16 shall apply:

17 “(1) The joint resolution of the other House
18 shall not be referred to a committee.

19 “(2) With respect to a joint resolution described
20 in subsection (a) of the House receiving the joint
21 resolution—

22 “(A) the procedure in that House shall be
23 the same as if no joint resolution had been re-
24 ceived from the other House; but

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

3 **“§ 804. Definitions**

4 “For purposes of this chapter—

5 “(1) The term ‘Federal agency’ means any
6 agency as that term is defined in section 551(1).

7 “(2) The term ‘major rule’ means any rule, in-
8 cluding an interim final rule, that the Administrator
9 of the Office of Information and Regulatory Affairs
10 of the Office of Management and Budget finds—

11 “(A) has resulted in or is likely to result
12 in—

13 “(i) an annual effect on the economy
14 of \$50,000,000 or more;

15 “(ii) a major increase in costs or
16 prices for consumers, individual industries,
17 Federal, State, or local government agen-
18 cies, or geographic regions; or

19 “(iii) significant adverse effects on
20 competition, employment, investment, pro-
21 ductivity, innovation, or on the ability of
22 United States-based enterprises to compete
23 with foreign-based enterprises in domestic
24 and export markets;

1 “(B) is made by the Administrator of the
2 Environmental Protection Agency and that
3 would have a significant impact on a substan-
4 tial number of agricultural entities, as deter-
5 mined by the Secretary of Agriculture (who
6 shall publish such determination in the Federal
7 Register);

8 “(C) is a rule that implements or provides
9 for the imposition or collection of a carbon tax;
10 or

11 “(D) is made under the Patient Protection
12 and Affordable Care Act (Public Law 111-
13 148).

14 “(3) The term ‘nonmajor rule’ means any rule
15 that is not a major rule.

16 “(4) The term ‘rule’ has the meaning given
17 such term in section 551, except that such term does
18 not include any rule of particular applicability, in-
19 cluding a rule that approves or prescribes for the fu-
20 ture rates, wages, prices, services, or allowances
21 therefore, corporate or financial structures, reorga-
22 nizations, mergers, or acquisitions thereof, or ac-
23 counting practices or disclosures bearing on any of
24 the foregoing.

1 “(5) The term ‘submission date or publication
2 date’, except as otherwise provided in this chapter,
3 means—

4 “(A) in the case of a major rule, the date
5 on which the Congress receives the report sub-
6 mitted under section 801(a)(1); and

7 “(B) in the case of a nonmajor rule, the
8 later of—

9 “(i) the date on which the Congress
10 receives the report submitted under section
11 801(a)(1); and

12 “(ii) the date on which the nonmajor
13 rule is published in the Federal Register, if
14 so published.

15 “(6) The term ‘agricultural entity’ means any
16 entity involved in or related to agricultural enter-
17 prise, including enterprises that are engaged in the
18 business of production of food and fiber, ranching
19 and raising of livestock, aquaculture, and all other
20 farming and agricultural related industries.

21 “(7) The term ‘carbon tax’ means a fee, levy,
22 or price on—

23 “(A) emissions, including carbon dioxide
24 emissions generated by the burning of coal, nat-
25 ural gas, or oil; or

1 “(B) coal, natural gas, or oil based on
2 emissions, including carbon dioxide emissions
3 that would be generated through the fuel’s com-
4 bustion.

5 **“§ 805. Judicial review**

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

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

12 “(c) The enactment of a joint resolution of approval
13 under section 802 shall not be interpreted to serve as a
14 grant or modification of statutory authority by Congress
15 for the promulgation of a rule, shall not extinguish or af-
16 fect any claim, whether substantive or procedural, against
17 any alleged defect in a rule, and shall not form part of
18 the record before the court in any judicial proceeding con-
19 cerning a rule except for purposes of determining whether
20 or not the rule is in effect.

21 **“§ 806. Exemption for monetary policy**

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

1 **“§ 807. Effective date of certain rules**

2 “Notwithstanding section 801—

3 “(1) any rule that establishes, modifies, opens,
4 closes, or conducts a regulatory program for a com-
5 mercial, recreational, or subsistence activity related
6 to hunting, fishing, or camping; or

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

13 shall take effect at such time as the Federal agency pro-
14 mulgating the rule determines.”.

15 **SEC. 2003. BUDGETARY EFFECTS OF RULES SUBJECT TO**
16 **SECTION 802 OF TITLE 5, UNITED STATES**
17 **CODE.**

18 Section 257(b)(2) of the Balanced Budget and Emer-
19 gency Deficit Control Act of 1985 is amended by adding
20 at the end the following new subparagraph:

21 “(E) BUDGETARY EFFECTS OF RULES
22 SUBJECT TO SECTION 802 OF TITLE 5, UNITED
23 STATES CODE.—Any rules subject to the con-
24 gressional approval procedure set forth in sec-
25 tion 802 of chapter 8 of title 5, United States
26 Code, affecting budget authority, outlays, or re-

1 cepts shall be assumed to be effective unless it
2 is not approved in accordance with such sec-
3 tion.”.

4 **SEC. 2004. GOVERNMENT ACCOUNTABILITY OFFICE STUDY**
5 **OF RULES.**

6 (a) IN GENERAL.—The Comptroller General of the
7 United States shall conduct a study to determine, as of
8 the date of the enactment of this subtitle—

9 (1) how many rules (as such term is defined in
10 section 804 of title 5, United States Code) were in
11 effect;

12 (2) how many major rules (as such term is de-
13 fined in section 804 of title 5, United States Code)
14 were in effect; and

15 (3) the total estimated economic cost imposed
16 by all such rules.

17 (b) REPORT.—Not later than one year after the date
18 of the enactment of this subtitle, the Comptroller General
19 of the United States shall submit a report to Congress
20 that contains the findings of the study conducted under
21 subsection (a).

1 **Subtitle B—Energy Consumers**
2 **Relief Act**

3 **SEC. 2201. PROHIBITION AGAINST FINALIZING CERTAIN EN-**
4 **ERGY-RELATED RULES THAT WILL CAUSE**
5 **SIGNIFICANT ADVERSE EFFECTS TO THE**
6 **ECONOMY.**

7 Notwithstanding any other provision of law, the Ad-
8 ministrator of the Environmental Protection Agency may
9 not promulgate as final an energy-related rule that is esti-
10 mated to cost more than \$1 billion if the Secretary of En-
11 ergy determines under section 2202(3) that the rule will
12 cause significant adverse effects to the economy.

13 **SEC. 2202. REPORTS AND DETERMINATIONS PRIOR TO PRO-**
14 **MULGATING AS FINAL CERTAIN ENERGY-RE-**
15 **LATED RULES.**

16 Before promulgating as final any energy-related rule
17 that is estimated to cost more than \$1 billion:

18 (1) REPORT TO CONGRESS.—The Administrator
19 of the Environmental Protection Agency shall sub-
20 mit to Congress a report (and transmit a copy to the
21 Secretary of Energy) containing—

22 (A) a copy of the rule;

23 (B) a concise general statement relating to
24 the rule;

1 (C) an estimate of the total costs of the
2 rule, including the direct costs and indirect
3 costs of the rule;

4 (D)(i) an estimate of the total benefits of
5 the rule and when such benefits are expected to
6 be realized;

7 (ii) a description of the modeling, the cal-
8 culations, the assumptions, and the limitations
9 due to uncertainty, speculation, or lack of infor-
10 mation associated with the estimates under this
11 subparagraph; and

12 (iii) a certification that all data and docu-
13 ments relied upon by the Agency in developing
14 such estimates—

15 (I) have been preserved; and

16 (II) are available for review by the
17 public on the Agency's Web site, except to
18 the extent to which publication of such
19 data and documents would constitute dis-
20 closure of confidential information in viola-
21 tion of applicable Federal law;

22 (E) an estimate of the increases in energy
23 prices, including potential increases in gasoline
24 or electricity prices for consumers, that may re-

1 sult from implementation or enforcement of the
2 rule; and

3 (F) a detailed description of the employ-
4 ment effects, including potential job losses and
5 shifts in employment, that may result from im-
6 plementation or enforcement of the rule.

7 (2) INITIAL DETERMINATION ON INCREASES
8 AND IMPACTS.—The Secretary of Energy, in con-
9 sultation with the Federal Energy Regulatory Com-
10 mission and the Administrator of the Energy Infor-
11 mation Administration, shall prepare an independent
12 analysis to determine whether the rule will cause—

13 (A) any increase in energy prices for con-
14 sumers, including low-income households, small
15 businesses, and manufacturers;

16 (B) any impact on fuel diversity of the Na-
17 tion’s electricity generation portfolio or on na-
18 tional, regional, or local electric reliability;

19 (C) any adverse effect on energy supply,
20 distribution, or use due to the economic or tech-
21 nical infeasibility of implementing the rule; or

22 (D) any other adverse effect on energy
23 supply, distribution, or use (including a short-
24 fall in supply and increased use of foreign sup-
25 plies).

1 (3) SUBSEQUENT DETERMINATION ON ADVERSE
2 EFFECTS TO THE ECONOMY.—If the Secretary of
3 Energy determines, under paragraph (2), that the
4 rule will cause an increase, impact, or effect de-
5 scribed in such paragraph, then the Secretary, in
6 consultation with the Administrator of the Environ-
7 mental Protection Agency, the Secretary of Com-
8 merce, the Secretary of Labor, and the Adminis-
9 trator of the Small Business Administration, shall—

10 (A) determine whether the rule will cause
11 significant adverse effects to the economy, tak-
12 ing into consideration—

13 (i) the costs and benefits of the rule
14 and limitations in calculating such costs
15 and benefits due to uncertainty, specula-
16 tion, or lack of information; and

17 (ii) the positive and negative impacts
18 of the rule on economic indicators, includ-
19 ing those related to gross domestic prod-
20 uct, unemployment, wages, consumer
21 prices, and business and manufacturing ac-
22 tivity; and

23 (B) publish the results of such determina-
24 tion in the Federal Register.

1 **SEC. 2203. DEFINITIONS.**

2 In this subtitle:

3 (1) The terms “direct costs” and “indirect
4 costs” have the meanings given such terms in chap-
5 ter 8 of the Environmental Protection Agency’s
6 “Guidelines for Preparing Economic Analyses”
7 dated December 17, 2010.

8 (2) The term “energy-related rule that is esti-
9 mated to cost more than \$1 billion” means a rule of
10 the Environmental Protection Agency that—

11 (A) regulates any aspect of the production,
12 supply, distribution, or use of energy or pro-
13 vides for such regulation by States or other gov-
14 ernmental entities; and

15 (B) is estimated by the Administrator of
16 the Environmental Protection Agency or the
17 Director of the Office of Management and
18 Budget to impose direct costs and indirect
19 costs, in the aggregate, of more than
20 \$1,000,000,000.

21 (3) The term “rule” has the meaning given to
22 such term in section 551 of title 5, United States
23 Code.

1 **SEC. 2204. PROHIBITION ON USE OF SOCIAL COST OF CAR-**
2 **BON IN ANALYSIS.**

3 (a) **IN GENERAL.**—Notwithstanding any other provi-
4 sion of law or any Executive order, the Administrator of
5 the Environmental Protection Agency may not use the so-
6 cial cost of carbon in order to incorporate social benefits
7 of reducing carbon dioxide emissions, or for any other rea-
8 son, in any cost-benefit analysis relating to an energy-re-
9 lated rule that is estimated to cost more than \$1 billion
10 unless and until a Federal law is enacted authorizing such
11 use.

12 (b) **DEFINITION.**—In this section, the term “social
13 cost of carbon” means the social cost of carbon as de-
14 scribed in the technical support document entitled “Tech-
15 nical Support Document: Technical Update of the Social
16 Cost of Carbon for Regulatory Impact Analysis Under Ex-
17 ecutive Order 12866”, published by the Interagency
18 Working Group on Social Cost of Carbon, United States
19 Government, in May 2013, or any successor or substan-
20 tially related document, or any other estimate of the mone-
21 tized damages associated with an incremental increase in
22 carbon dioxide emissions in a given year.

1 **Subtitle C—Electricity Security**
2 **and Affordability Act**

3 **SEC. 2301. STANDARDS OF PERFORMANCE FOR NEW FOS-**
4 **SIL FUEL-FIRED ELECTRIC UTILITY GENER-**
5 **ATING UNITS.**

6 (a) **LIMITATION.**—The Administrator of the Environ-
7 mental Protection Agency may not issue, implement, or
8 enforce any proposed or final rule under section 111 of
9 the Clean Air Act (42 U.S.C. 7411) that establishes a
10 standard of performance for emissions of any greenhouse
11 gas from any new source that is a fossil fuel-fired electric
12 utility generating unit unless such rule meets the require-
13 ments under subsections (b) and (c).

14 (b) **REQUIREMENTS.**—In issuing any rule under sec-
15 tion 111 of the Clean Air Act (42 U.S.C. 7411) estab-
16 lishing standards of performance for emissions of any
17 greenhouse gas from new sources that are fossil fuel-fired
18 electric utility generating units, the Administrator of the
19 Environmental Protection Agency (for purposes of estab-
20 lishing such standards)—

21 (1) shall separate sources fueled with coal and
22 natural gas into separate categories; and

23 (2) shall not set a standard based on the best
24 system of emission reduction for new sources within
25 a fossil-fuel category unless—

1 (A) such standard has been achieved on
2 average for at least one continuous 12-month
3 period (excluding planned outages) by each of
4 at least 6 units within such category—

5 (i) each of which is located at a dif-
6 ferent electric generating station in the
7 United States;

8 (ii) which, collectively, are representa-
9 tive of the operating characteristics of elec-
10 tric generation at different locations in the
11 United States; and

12 (iii) each of which is operated for the
13 entire 12-month period on a full commer-
14 cial basis; and

15 (B) no results obtained from any dem-
16 onstration project are used in setting such
17 standard.

18 (c) COAL HAVING A HEAT CONTENT OF 8300 OR
19 LESS BRITISH THERMAL UNITS PER POUND.—

20 (1) SEPARATE SUBCATEGORY.—In carrying out
21 subsection (b)(1), the Administrator of the Environ-
22 mental Protection Agency shall establish a separate
23 subcategory for new sources that are fossil fuel-fired
24 electric utility generating units using coal with an

1 average heat content of 8300 or less British Ther-
2 mal Units per pound.

3 (2) STANDARD.—Notwithstanding subsection
4 (b)(2), in issuing any rule under section 111 of the
5 Clean Air Act (42 U.S.C. 7411) establishing stand-
6 ards of performance for emissions of any greenhouse
7 gas from new sources in such subcategory, the Ad-
8 ministrator of the Environmental Protection Agency
9 shall not set a standard based on the best system of
10 emission reduction unless—

11 (A) such standard has been achieved on
12 average for at least one continuous 12-month
13 period (excluding planned outages) by each of
14 at least 3 units within such subcategory—

15 (i) each of which is located at a dif-
16 ferent electric generating station in the
17 United States;

18 (ii) which, collectively, are representa-
19 tive of the operating characteristics of elec-
20 tric generation at different locations in the
21 United States; and

22 (iii) each of which is operated for the
23 entire 12-month period on a full commer-
24 cial basis; and

1 (B) no results obtained from any dem-
2 onstration project are used in setting such
3 standard.

4 (d) TECHNOLOGIES.—Nothing in this section shall be
5 construed to preclude the issuance, implementation, or en-
6 forcement of a standard of performance that—

7 (1) is based on the use of one or more tech-
8 nologies that are developed in a foreign country, but
9 has been demonstrated to be achievable at fossil
10 fuel-fired electric utility generating units in the
11 United States; and

12 (2) meets the requirements of subsections (b)
13 and (c), as applicable.

14 **SEC. 2302. CONGRESS TO SET EFFECTIVE DATE FOR STAND-**
15 **ARDS OF PERFORMANCE FOR EXISTING,**
16 **MODIFIED, AND RECONSTRUCTED FOSSIL**
17 **FUEL-FIRED ELECTRIC UTILITY GENERATING**
18 **UNITS.**

19 (a) APPLICABILITY.—This section applies with re-
20 spect to any rule or guidelines issued by the Administrator
21 of the Environmental Protection Agency under section
22 111 of the Clean Air Act (42 U.S.C. 7411) that—

23 (1) establish any standard of performance for
24 emissions of any greenhouse gas from any modified

1 or reconstructed source that is a fossil fuel-fired
2 electric utility generating unit; or

3 (2) apply to the emissions of any greenhouse
4 gas from an existing source that is a fossil fuel-fired
5 electric utility generating unit.

6 (b) CONGRESS TO SET EFFECTIVE DATE.—A rule
7 or guidelines described in subsection (a) shall not take ef-
8 fect unless a Federal law is enacted specifying such rule’s
9 or guidelines’ effective date.

10 (c) REPORTING.—A rule or guidelines described in
11 subsection (a) shall not take effect unless the Adminis-
12 trator of the Environmental Protection Agency has sub-
13 mitted to Congress a report containing each of the fol-
14 lowing:

15 (1) The text of such rule or guidelines.

16 (2) The economic impacts of such rule or guide-
17 lines, including the potential effects on—

18 (A) economic growth, competitiveness, and
19 jobs in the United States;

20 (B) electricity ratepayers, including low-in-
21 come ratepayers in affected States;

22 (C) required capital investments and pro-
23 jected costs for operation and maintenance of
24 new equipment required to be installed; and

1 (D) the global economic competitiveness of
2 the United States.

3 (3) The amount of greenhouse gas emissions
4 that such rule or guidelines are projected to reduce
5 as compared to overall global greenhouse gas emis-
6 sions.

7 (d) CONSULTATION.—In carrying out subsection (c),
8 the Administrator of the Environmental Protection Agen-
9 cy shall consult with the Administrator of the Energy In-
10 formation Administration, the Comptroller General of the
11 United States, the Director of the National Energy Tech-
12 nology Laboratory, and the Under Secretary of Commerce
13 for Standards and Technology.

14 **SEC. 2303. REPEAL OF EARLIER RULES AND GUIDELINES.**

15 The following rules and guidelines shall be of no force
16 or effect, and shall be treated as though such rules and
17 guidelines had never been issued:

18 (1) The proposed rule—

19 (A) entitled “Standards of Performance
20 for Greenhouse Gas Emissions for New Sta-
21 tionary Sources: Electric Utility Generating
22 Units”, published at 77 Fed. Reg. 22392 (April
23 13, 2012); and

24 (B) withdrawn pursuant to the notice enti-
25 tled “Withdrawal of Proposed Standards of

1 Performance for Greenhouse Gas Emissions for
2 New Stationary Sources: Electric Utility Gener-
3 ating Units”, signed by the Administrator of
4 the Environmental Protection Agency on Sep-
5 tember 20, 2013, and identified by docket ID
6 number EPA–HQ–OAR–2011–0660.

7 (2) The proposed rule entitled “Standards of
8 Performance for Greenhouse Gas Emissions from
9 New Stationary Sources: Electric Utility Generating
10 Units”, signed by the Administrator of the Environ-
11 mental Protection Agency on September 20, 2013,
12 and identified by docket ID number EPA–HQ–
13 OAR–2013–0495.

14 (3) With respect to the proposed rule described
15 in paragraph (1), any successor or substantially
16 similar proposed or final rule that—

17 (A) is issued prior to the date of the enact-
18 ment of this Act;

19 (B) is applicable to any new source that is
20 a fossil fuel-fired electric utility generating unit;
21 and

22 (C) does not meet the requirements under
23 subsections (b) and (c) of section 2.

1 (4) Any proposed or final rule or guidelines
2 under section 111 of the Clean Air Act (42 U.S.C.
3 7411) that—

4 (A) are issued prior to the date of the en-
5 actment of this Act; and

6 (B) establish any standard of performance
7 for emissions of any greenhouse gas from any
8 modified or reconstructed source that is a fossil
9 fuel-fired electric utility generating unit or
10 apply to the emissions of any greenhouse gas
11 from an existing source that is a fossil fuel-fired
12 electric utility generating unit.

13 **SEC. 2304. DEFINITIONS.**

14 In this subtitle:

15 (1) **DEMONSTRATION PROJECT.**—The term
16 “demonstration project” means a project to test or
17 demonstrate the feasibility of carbon capture and
18 storage technologies that has received Federal Gov-
19 ernment funding or financial assistance.

20 (2) **EXISTING SOURCE.**—The term “existing
21 source” has the meaning given such term in section
22 111(a) of the Clean Air Act (42 U.S.C. 7411(a)),
23 except such term shall not include any modified
24 source.

1 (3) GREENHOUSE GAS.—The term “greenhouse
2 gas” means any of the following:

3 (A) Carbon dioxide.

4 (B) Methane.

5 (C) Nitrous oxide.

6 (D) Sulfur hexafluoride.

7 (E) Hydrofluorocarbons.

8 (F) Perfluorocarbons.

9 (4) MODIFICATION.—The term “modification”
10 has the meaning given such term in section 111(a)
11 of the Clean Air Act (42 U.S.C. 7411(a)).

12 (5) MODIFIED SOURCE.—The term “modified
13 source” means any stationary source, the modifica-
14 tion of which is commenced after the date of the en-
15 actment of this Act.

16 (6) NEW SOURCE.—The term “new source” has
17 the meaning given such term in section 111(a) of
18 the Clean Air Act (42 U.S.C. 7411(a)), except that
19 such term shall not include any modified source.

1 **Subtitle D—Coal Residuals Reuse**
2 **and Management**

3 **SEC. 2401. MANAGEMENT AND DISPOSAL OF COAL COMBUS-**
4 **TION RESIDUALS.**

5 (a) IN GENERAL.—Subtitle D of the Solid Waste Dis-
6 posal Act (42 U.S.C. 6941 et seq.) is amended by adding
7 at the end the following:

8 **“SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COM-**
9 **BUSTION RESIDUALS.**

10 “(a) STATE PERMIT PROGRAMS FOR COAL COMBUS-
11 TION RESIDUALS.—Each State may adopt, implement,
12 and enforce a coal combustion residuals permit program
13 if such State provides the notification required under sub-
14 section (b)(1), and the certification required under sub-
15 section (b)(2).

16 “(b) STATE ACTIONS.—

17 “(1) NOTIFICATION.—Not later than 6 months
18 after the date of enactment of this section (except
19 as provided by the deadline identified under sub-
20 section (d)(3)(B)), the Governor of each State shall
21 notify the Administrator, in writing, whether such
22 State will adopt and implement a coal combustion
23 residuals permit program.

24 “(2) CERTIFICATION.—

1 “(A) IN GENERAL.—Not later than 36
2 months after the date of enactment of this sec-
3 tion (except as provided in subsection
4 (f)(1)(A)), in the case of a State that has noti-
5 fied the Administrator that it will implement a
6 coal combustion residuals permit program, the
7 head of the lead State implementing agency
8 shall submit to the Administrator a certification
9 that such coal combustion residuals permit pro-
10 gram meets the requirements described in sub-
11 section (c).

12 “(B) CONTENTS.—A certification sub-
13 mitted under this paragraph shall include—

14 “(i) a letter identifying the lead State
15 implementing agency, signed by the head
16 of such agency;

17 “(ii) identification of any other State
18 agencies involved with the implementation
19 of the coal combustion residuals permit
20 program;

21 “(iii) an explanation of how the State
22 coal combustion residuals permit program
23 meets the requirements of this section, in-
24 cluding a description of the State’s—

1 “(I) process to inspect or other-
2 wise determine compliance with such
3 permit program;

4 “(II) process to enforce the re-
5 quirements of such permit program;

6 “(III) public participation proc-
7 ess for the promulgation, amendment,
8 or repeal of regulations for, and the
9 issuance of permits under, such per-
10 mit program;

11 “(IV) statutes, regulations, or
12 policies pertaining to public access to
13 information, such as groundwater
14 monitoring data; and

15 “(V) statutes, regulations, or
16 policies pertaining to structural integ-
17 rity or dam safety that may be ap-
18 plied to structures through such per-
19 mit program;

20 “(iv) a certification that the State has
21 in effect, at the time of certification, stat-
22 utes or regulations necessary to implement
23 a coal combustion residuals permit pro-
24 gram that meets the requirements de-
25 scribed in subsection (c);

1 “(v) copies of State statutes and regu-
2 lations described in clause (iv); and

3 “(vi) an emergency action plan for
4 State response to a leak or spill at a struc-
5 ture that receives coal combustion residu-
6 als.

7 “(C) UPDATES.—A State may update the
8 certification as needed to reflect changes to the
9 coal combustion residuals permit program.

10 “(3) MAINTENANCE OF 4005(c) OR 3006 PRO-
11 GRAM.—In order to adopt or implement a coal com-
12 bustion residuals permit program under this section
13 (including pursuant to subsection (f)), the State im-
14 plementing agency shall maintain an approved per-
15 mit program or other system of prior approval and
16 conditions under section 4005(c) or an authorized
17 program under section 3006.

18 “(c) REQUIREMENTS FOR A COAL COMBUSTION RE-
19 SIDUALS PERMIT PROGRAM.—A coal combustion residuals
20 permit program shall consist of the following:

21 “(1) GENERAL REQUIREMENTS.—

22 “(A) IN GENERAL.—The implementing
23 agency shall—

24 “(i) apply the subset of the revised
25 criteria described in paragraph (2) to own-

1 ers or operators of structures, including
2 surface impoundments, that receive coal
3 combustion residuals on or after the date
4 of enactment of this section;

5 “(ii) with respect to structures that
6 are receiving coal combustion residuals as
7 of the date of enactment of this section,
8 take the actions required under paragraph
9 (3);

10 “(iii) impose requirements for surface
11 impoundments that do not meet certain
12 criteria pursuant to paragraph (4); and

13 “(iv) require that closure of structures
14 occur in accordance with paragraph (5).

15 “(B) STRUCTURAL INTEGRITY.—

16 “(i) ENGINEERING CERTIFICATION.—
17 The implementing agency shall require
18 that an independent registered professional
19 engineer certify that—

20 “(I) the design of each structure
21 that receives coal combustion residu-
22 als on or after the date of enactment
23 of this section is in accordance with
24 recognized and generally accepted
25 good engineering practices for con-

1 tainment of the maximum volume of
2 coal combustion residuals and liquids
3 which can be impounded therein; and

4 “(II) the construction and main-
5 tenance of the structure will ensure
6 structural stability.

7 “(ii) EMERGENCY ACTION PLAN.—

8 The implementing agency shall require
9 that the owner or operator of any structure
10 that is a surface impoundment that re-
11 ceives coal combustion residuals on or after
12 the date of enactment of this section and
13 that is classified by the State as posing a
14 high hazard potential pursuant to the
15 guidelines published by the Federal Emer-
16 gency Management Agency entitled ‘Fed-
17 eral Guidelines for Dam Safety: Hazard
18 Potential Classification System for Dams’
19 (FEMA Publication Number 333) prepare
20 and maintain an emergency action plan
21 that identifies responsible persons and ac-
22 tions to be taken in the event of a dam
23 safety emergency.

24 “(iii) INSPECTION.—

1 “(I) IN GENERAL.—The imple-
2 menting agency shall require that
3 structures that are surface impound-
4 ments that receive coal combustion re-
5 siduals on or after the date of enact-
6 ment of this section be inspected not
7 less than annually by an independent
8 registered professional engineer to as-
9 sure that the design, operation, and
10 maintenance of the surface impound-
11 ment is in accordance with recognized
12 and generally accepted good engineer-
13 ing practices for containment of the
14 maximum volume of coal combustion
15 residuals and liquids which can be im-
16 pounded therein, so as to ensure dam
17 stability.

18 “(II) POTENTIALLY HAZARDOUS
19 CONDITIONS.—The implementing
20 agency shall require that if an inspec-
21 tion under subclause (I), or a periodic
22 evaluation under clause (iv), reveals a
23 potentially hazardous condition, the
24 owner or operator of the structure
25 shall immediately take action to miti-

1 gate the potentially hazardous condi-
2 tion and notify appropriate State and
3 local first responders.

4 “(iv) PERIODIC EVALUATION.—The
5 implementing agency shall require that
6 structures that are surface impoundments
7 that receive coal combustion residuals on
8 or after the date of enactment of this sec-
9 tion be periodically evaluated for appear-
10 ances of structural weakness.

11 “(v) DEFICIENCY.—

12 “(I) IN GENERAL.—If the head
13 of the implementing agency deter-
14 mines that a structure is deficient
15 with respect to the requirements in
16 clause (i), (iii), or (iv), the head of the
17 agency has the authority to require
18 action to correct the deficiency accord-
19 ing to a schedule determined by the
20 agency.

21 “(II) UNCORRECTED DEFICI-
22 CIENCIES.—If a deficiency is not cor-
23 rected according to the schedule, the
24 head of the implementing agency has
25 the authority to require that the

1 structure close in accordance with
2 paragraph (5).

3 “(III) DAM SAFETY CONSULTA-
4 TION.—In the case of a structure that
5 is a surface impoundment, the head of
6 the implementing agency shall, in
7 making a determination under sub-
8 clause (I), consult with appropriate
9 State dam safety officials.

10 “(C) LOCATION.—The implementing agen-
11 cy shall require that structures that first receive
12 coal combustion residuals on or after the date
13 of enactment of this section shall be constructed
14 with a base located a minimum of 2 feet above
15 the upper limit of the water table, unless it is
16 demonstrated to the satisfaction of the imple-
17 menting agency that—

18 “(i) the hydrogeologic characteristics
19 of a structure and surrounding land would
20 preclude such a requirement; and

21 “(ii) the function and integrity of the
22 liner system will not be adversely impacted
23 by contact with the water table.

24 “(D) WIND DISPERSAL.—

1 “(i) IN GENERAL.—The implementing
2 agency shall require that owners or opera-
3 tors of structures that receive coal combus-
4 tion residuals on or after the date of enact-
5 ment of this section address wind dispersal
6 of dust by requiring cover, or by wetting
7 coal combustion residuals with water to a
8 moisture content that prevents wind dis-
9 persal, facilitates compaction, and does not
10 result in free liquids.

11 “(ii) ALTERNATIVE METHODS.—Sub-
12 ject to the review and approval by the im-
13 plementing agency, owners or operators of
14 structures that receive coal combustion re-
15 siduals on or after the date of enactment
16 of this section may propose alternative
17 methods to address wind dispersal of dust
18 that will provide comparable or more effec-
19 tive control of dust.

20 “(E) PERMITS.—The implementing agency
21 shall require that owners or operators of struc-
22 tures that receive coal combustion residuals on
23 or after the date of enactment of this section
24 apply for and obtain permits incorporating the

1 requirements of the coal combustion residuals
2 permit program.

3 “(F) PUBLIC AVAILABILITY OF INFORMA-
4 TION.—Except for information with respect to
5 which disclosure is prohibited under section
6 1905 of title 18, United States Code, the imple-
7 menting agency shall ensure that—

8 “(i) documents for permit determina-
9 tions are made available for public review
10 and comment under the public participa-
11 tion process described in subsection
12 (b)(2)(B)(iii)(III) or in subsection (e)(6),
13 as applicable;

14 “(ii) final determinations on permit
15 applications are made known to the public;
16 and

17 “(iii) groundwater monitoring data
18 collected under paragraph (2) is publicly
19 available.

20 “(G) AGENCY AUTHORITY.—

21 “(i) IN GENERAL.—The implementing
22 agency has the authority to—

23 “(I) obtain information necessary
24 to determine whether the owner or op-
25 erator of a structure is in compliance

1 with the requirements of this sub-
2 section;

3 “(II) conduct or require moni-
4 toring and testing to ensure that
5 structures are in compliance with the
6 requirements of this subsection; and

7 “(III) enter, at reasonable times,
8 any site or premise subject to the coal
9 combustion residuals permit program
10 for the purpose of inspecting struc-
11 tures and reviewing records relevant
12 to the design, operation, and mainte-
13 nance of structures.

14 “(ii) MONITORING AND TESTING.—If
15 monitoring or testing is conducted under
16 clause (i)(II) by or for the implementing
17 agency, the implementing agency shall, if
18 requested, provide to the owner or oper-
19 ator—

20 “(I) a written description of the
21 monitoring or testing completed;

22 “(II) at the time of sampling, a
23 portion of each sample equal in vol-
24 ume or weight to the portion retained

1 by or for the implementing agency;
2 and

3 “(III) a copy of the results of
4 any analysis of samples collected by or
5 for the implementing agency.

6 “(2) REVISED CRITERIA.—The subset of the re-
7 vised criteria referred to in paragraph (1)(A)(i) are
8 as follows:

9 “(A) DESIGN REQUIREMENTS.—For new
10 structures, and lateral expansions of existing
11 structures, that first receive coal combustion re-
12 siduals on or after the date of enactment of this
13 section, the revised criteria regarding design re-
14 quirements described in section 258.40 of title
15 40, Code of Federal Regulations, except that
16 the leachate collection system requirements de-
17 scribed in section 258.40(a)(2) of title 40, Code
18 of Federal Regulations, do not apply to struc-
19 tures that are surface impoundments.

20 “(B) GROUNDWATER MONITORING AND
21 CORRECTIVE ACTION.—For all structures that
22 receive coal combustion residuals on or after the
23 date of enactment of this section, the revised
24 criteria regarding groundwater monitoring and
25 corrective action requirements described in sub-

1 part E of part 258 of title 40, Code of Federal
2 Regulations, except that, for the purposes of
3 this subparagraph, the revised criteria shall also
4 include—

5 “(i) for the purposes of detection
6 monitoring, the constituents boron, chlo-
7 ride, conductivity, fluoride, mercury, pH,
8 sulfate, sulfide, and total dissolved solids;
9 and

10 “(ii) for the purposes of assessment
11 monitoring, establishing a groundwater
12 protection standard, and assessment of
13 corrective measures, the constituents alu-
14 minum, boron, chloride, fluoride, iron,
15 manganese, molybdenum, pH, sulfate, and
16 total dissolved solids.

17 “(C) CLOSURE.—For all structures that
18 receive coal combustion residuals on or after the
19 date of enactment of this section, in a manner
20 consistent with paragraph (5), the revised cri-
21 teria for closure described in subsections (a)
22 through (e) and (h) through (j) of section
23 258.60 of title 40, Code of Federal Regulations.

24 “(D) POST-CLOSURE.—For all structures
25 that receive coal combustion residuals on or

1 after the date of enactment of this section, the
2 revised criteria for post-closure care described
3 in section 258.61 of title 40, Code of Federal
4 Regulations, except for the requirement de-
5 scribed in subsection (a)(4) of that section.

6 “(E) LOCATION RESTRICTIONS.—The re-
7 vised criteria for location restrictions described
8 in—

9 “(i) for new structures, and lateral ex-
10 pansions of existing structures, that first
11 receive coal combustion residuals on or
12 after the date of enactment of this section,
13 sections 258.11 through 258.15 of title 40,
14 Code of Federal Regulations; and

15 “(ii) for existing structures that re-
16 ceive coal combustion residuals on or after
17 the date of enactment of this section, sec-
18 tions 258.11 and 258.15 of title 40, Code
19 of Federal Regulations.

20 “(F) AIR QUALITY.—For all structures
21 that receive coal combustion residuals on or
22 after the date of enactment of this section, the
23 revised criteria for air quality described in sec-
24 tion 258.24 of title 40, Code of Federal Regula-
25 tions.

1 “(G) FINANCIAL ASSURANCE.—For all
2 structures that receive coal combustion residu-
3 als on or after the date of enactment of this
4 section, the revised criteria for financial assur-
5 ance described in subpart G of part 258 of title
6 40, Code of Federal Regulations.

7 “(H) SURFACE WATER.—For all structures
8 that receive coal combustion residuals on or
9 after the date of enactment of this section, the
10 revised criteria for surface water described in
11 section 258.27 of title 40, Code of Federal Reg-
12 ulations.

13 “(I) RECORDKEEPING.—For all structures
14 that receive coal combustion residuals on or
15 after the date of enactment of this section, the
16 revised criteria for recordkeeping described in
17 section 258.29 of title 40, Code of Federal Reg-
18 ulations.

19 “(J) RUN-ON AND RUN-OFF CONTROL SYS-
20 TEMS FOR LAND-BASED UNITS.—For all land-
21 fills and other land-based units, other than sur-
22 face impoundments, that receive coal combus-
23 tion residuals on or after the date of enactment
24 of this section, the revised criteria for run-on

1 and run-off control systems described in section
2 258.26 of title 40, Code of Federal Regulations.

3 “(K) RUN-OFF CONTROL SYSTEMS FOR
4 SURFACE IMPOUNDMENTS.—For all surface im-
5 poundments that receive coal combustion re-
6 siduals on or after the date of enactment of this
7 section, the revised criteria for run-off control
8 systems described in section 258.26(a)(2) of
9 title 40, Code of Federal Regulations.

10 “(3) PERMIT PROGRAM IMPLEMENTATION FOR
11 EXISTING STRUCTURES.—

12 “(A) NOTIFICATION.—Not later than the
13 date on which a State submits a certification
14 under subsection (b)(2), not later than 30
15 months after the Administrator receives notice
16 under subsection (e)(1)(A), or not later than 36
17 months after the date of enactment of this sec-
18 tion with respect to a coal combustion residuals
19 permit program that is being implemented by
20 the Administrator under subsection (e)(3), as
21 applicable, the implementing agency shall notify
22 owners or operators of structures that are re-
23 ceiving coal combustion residuals as of the date
24 of enactment of this section within the State
25 of—

1 “(i) the obligation to apply for and
2 obtain a permit under subparagraph (C);
3 and

4 “(ii) the requirements referred to in
5 subparagraph (B).

6 “(B) COMPLIANCE WITH CERTAIN RE-
7 QUIREMENTS.—Not later than 12 months after
8 the date on which a State submits a certifi-
9 cation under subsection (b)(2), not later than
10 42 months after the Administrator receives no-
11 tice under subsection (e)(1)(A), or not later
12 than 48 months after the date of enactment of
13 this section with respect to a coal combustion
14 residuals permit program that is being imple-
15 mented by the Administrator under subsection
16 (e)(3), as applicable, the implementing agency
17 shall require owners or operators of structures
18 that are receiving coal combustion residuals as
19 of the date of enactment of this section to com-
20 ply with—

21 “(i) the requirements under para-
22 graphs (1)(B) (ii) and (iii), (1)(D), (2)(B),
23 (2)(F), (2)(H), (2)(J), and (2)(K); and

24 “(ii) the groundwater recordkeeping
25 requirement described in section

1 258.29(a)(5) of title 40, Code of Federal
2 Regulations.

3 “(C) PERMITS.—

4 “(i) PERMIT DEADLINE.—Not later
5 than 48 months after the date on which a
6 State submits a certification under sub-
7 section (b)(2), not later than 78 months
8 after the Administrator receives notice
9 under subsection (e)(1)(A), or not later
10 than 84 months after the date of enact-
11 ment of this section with respect to a coal
12 combustion residuals permit program that
13 is being implemented by the Administrator
14 under subsection (e)(3), as applicable, the
15 implementing agency shall issue, with re-
16 spect to a structure that is receiving coal
17 combustion residuals as of the date of en-
18 actment of this section, a final permit in-
19 corporating the requirements of the coal
20 combustion residuals permit program, or a
21 final denial for an application submitted
22 requesting such a permit.

23 “(ii) APPLICATION DEADLINE.—The
24 implementing agency shall identify, in col-
25 laboration with the owner or operator of a

1 structure described in clause (i), a reason-
2 able deadline by which the owner or oper-
3 ator shall submit a permit application
4 under such clause.

5 “(D) INTERIM OPERATION.—

6 “(i) PRIOR TO DEADLINES.—With re-
7 spect to any period of time on or after the
8 date of enactment of this section but prior
9 to the applicable deadline in subparagraph
10 (B), the owner or operator of a structure
11 that is receiving coal combustion residuals
12 as of the date of enactment of this section
13 may continue to operate such structure
14 until such applicable deadline under the
15 applicable authority in effect.

16 “(ii) PRIOR TO PERMIT.—Unless the
17 implementing agency determines that the
18 structure should close pursuant to para-
19 graph (5), if the owner or operator of a
20 structure that is receiving coal combustion
21 residuals as of the date of enactment of
22 this section meets the requirements re-
23 ferred to in subparagraph (B) by the appli-
24 cable deadline in such subparagraph, the
25 owner or operator may operate the struc-

1 ture until such time as the implementing
2 agency issues, under subparagraph (C), a
3 final permit incorporating the requirements
4 of the coal combustion residuals permit
5 program, or a final denial for an applica-
6 tion submitted requesting such a permit.

7 “(4) REQUIREMENTS FOR SURFACE IMPOUND-
8 MENTS THAT DO NOT MEET CERTAIN CRITERIA.—

9 “(A) SURFACE IMPOUNDMENTS THAT RE-
10 QUIRE ASSESSMENT OF CORRECTIVE MEASURES
11 WITHIN 10 YEARS OF THE DATE OF ENACT-
12 MENT.—

13 “(i) IN GENERAL.—In addition to the
14 groundwater monitoring and corrective ac-
15 tion requirements described in paragraph
16 (2)(B), the implementing agency shall re-
17 quire a surface impoundment that receives
18 coal combustion residuals on or after the
19 date of enactment of this section to comply
20 with the requirements in clause (ii) of this
21 subparagraph and clauses (i) and (ii) of
22 subparagraph (D) if the surface impound-
23 ment—

24 “(I) does not—

1 “(aa) have a liner system
2 described in section 258.40(b) of
3 title 40, Code of Federal Regula-
4 tions; and

5 “(bb) meet the design cri-
6 teria described in section
7 258.40(a)(1) of title 40, Code of
8 Federal Regulations; and

9 “(II) within 10 years after the
10 date of enactment of this section, is
11 required under section 258.56(a) of
12 title 40, Code of Federal Regulations,
13 to undergo an assessment of correc-
14 tive measures for any constituent cov-
15 ered under subpart E of part 258 of
16 title 40, Code of Federal Regulations,
17 or otherwise identified in paragraph
18 (2)(B)(ii) of this subsection, for which
19 assessment groundwater monitoring is
20 required.

21 “(ii) DEADLINE TO MEET GROUND-
22 WATER PROTECTION STANDARD.—Except
23 as provided in subparagraph (C), the im-
24 plementing agency shall require that the
25 groundwater protection standard, for sur-

1 face impoundments identified in clause (i)
2 of this subparagraph, established by the
3 implementing agency under section
4 258.55(h) or 258.55(i) of title 40, Code of
5 Federal Regulations, for any constituent
6 for which corrective measures are required
7 shall be met—

8 “(I) as soon as practicable at the
9 relevant point of compliance, as de-
10 scribed in section 258.40(d) of title
11 40, Code of Federal Regulations; and

12 “(II) not later than 10 years
13 after the date of enactment of this
14 section.

15 “(B) SURFACE IMPOUNDMENTS SUBJECT
16 TO A STATE CORRECTIVE ACTION REQUIRE-
17 MENT AS OF THE DATE OF ENACTMENT.—

18 “(i) IN GENERAL.—In addition to the
19 groundwater monitoring and corrective ac-
20 tion requirements described in paragraph
21 (2)(B), the implementing agency shall re-
22 quire a surface impoundment that receives
23 coal combustion residuals on or after the
24 date of enactment of this section to comply
25 with the requirements in clause (ii) of this

1 subparagraph and clauses (i) and (ii) of
2 subparagraph (D) if the surface impound-
3 ment—

4 “(I) does not—

5 “(aa) have a liner system
6 described in section 258.40(b) of
7 title 40, Code of Federal Regula-
8 tions; and

9 “(bb) meet the design cri-
10 teria described in section
11 258.40(a)(1) of title 40, Code of
12 Federal Regulations; and

13 “(II) as of the date of enactment
14 of this section, is subject to a State
15 corrective action requirement.

16 “(ii) DEADLINE TO MEET GROUND-
17 WATER PROTECTION STANDARD.—Except
18 as provided in subparagraph (C), the im-
19 plementing agency shall require that the
20 groundwater protection standard, for sur-
21 face impoundments identified in clause (i)
22 of this subparagraph, established by the
23 implementing agency under section
24 258.55(h) or 258.55(i) of title 40, Code of
25 Federal Regulations, for any constituent

1 for which corrective measures are required
2 shall be met—

3 “(I) as soon as practicable at the
4 relevant point of compliance, as de-
5 scribed in section 258.40(d) of title
6 40, Code of Federal Regulations; and

7 “(II) not later than 8 years after
8 the date of enactment of this section.

9 “(C) EXTENSION OF DEADLINE.—

10 “(i) IN GENERAL.—Except as pro-
11 vided in clause (ii) of this subparagraph,
12 the deadline for meeting a groundwater
13 protection standard under subparagraph
14 (A)(ii) or (B)(ii) may be extended by the
15 implementing agency, after opportunity for
16 public notice and comment under the pub-
17 lic participation process described in sub-
18 section (b)(2)(B)(iii)(III), or in subsection
19 (e)(6) based on—

20 “(I) the effectiveness of any in-
21 terim measures implemented by the
22 owner or operator of the facility under
23 section 258.58(a)(3) of title 40, Code
24 of Federal Regulations;

1 “(II) the level of progress dem-
2 onstrated in meeting the groundwater
3 protection standard;

4 “(III) the potential for other ad-
5 verse human health or environmental
6 exposures attributable to the contami-
7 nation from the surface impoundment
8 undergoing corrective action; and

9 “(IV) the lack of available alter-
10 native management capacity for the
11 coal combustion residuals and related
12 materials managed in the impound-
13 ment at the facility at which the im-
14 poundment is located if the owner or
15 operator has used best efforts, as nec-
16 essary, to design, obtain any nec-
17 essary permits, finance, construct, and
18 render operational the alternative
19 management capacity during the time
20 period for meeting a groundwater pro-
21 tection standard in subparagraph
22 (A)(ii) or (B)(ii).

23 “(ii) EXCEPTION.—The deadline
24 under subparagraph (A)(ii) or (B)(ii) shall
25 not be extended if there has been contami-

1 nation of public or private drinking water
2 systems attributable to a surface impound-
3 ment undergoing corrective action, unless
4 the contamination has been addressed by
5 providing a permanent replacement water
6 system.

7 “(D) ADDITIONAL REQUIREMENTS.—

8 “(i) CLOSURE.—If the deadline under
9 subparagraph (A)(ii), (B)(ii), or (C) is not
10 satisfied, the surface impoundment shall
11 cease receiving coal combustion residuals
12 and initiate closure under paragraph (5).

13 “(ii) INTERIM MEASURES.—

14 “(I) IN GENERAL.—Except as
15 provided in subelause (II), not later
16 than 90 days after the date on which
17 the assessment of corrective measures
18 is initiated, the owner or operator of
19 a surface impoundment described in
20 subparagraph (A) or (B) shall imple-
21 ment interim measures, as necessary,
22 under the factors in section
23 258.58(a)(3) of title 40, Code of Fed-
24 eral Regulations.

1 “(II) IMPOUNDMENTS SUBJECT
2 TO STATE CORRECTIVE ACTION RE-
3 QUIREMENT AS OF THE DATE OF EN-
4 ACTMENT.—Subclause (I) shall only
5 apply to surface impoundments sub-
6 ject to a State corrective action re-
7 quirement as of the date of enactment
8 of this section if the owner or oper-
9 ator has not implemented interim
10 measures, as necessary, under the fac-
11 tors in section 258.58(a)(3) of title
12 40, Code of Federal Regulations.

13 “(E) SURFACE IMPOUNDMENTS THAT RE-
14 QUIRE ASSESSMENT OF CORRECTIVE MEASURES
15 MORE THAN 10 YEARS AFTER DATE OF ENACT-
16 MENT.—

17 “(i) IN GENERAL.—In addition to the
18 groundwater monitoring and corrective ac-
19 tion requirements described in paragraph
20 (2)(B), the implementing agency shall re-
21 quire a surface impoundment that receives
22 coal combustion residuals on or after the
23 date of enactment of this section to comply
24 with the requirements in clause (ii) if the
25 surface impoundment—

1 “(I) does not—

2 “(aa) have a liner system
3 described in section 258.40(b) of
4 title 40, Code of Federal Regula-
5 tions; and

6 “(bb) meet the design cri-
7 teria described in section
8 258.40(a)(1) of title 40, Code of
9 Federal Regulations; and

10 “(II) more than 10 years after
11 the date of enactment of this section,
12 is required under section 258.56(a)
13 title 40, Code of Federal Regulations,
14 to undergo an assessment of correc-
15 tive measures for any constituent cov-
16 ered under subpart E of part 258 of
17 title 40, Code of Federal Regulations,
18 or otherwise identified in paragraph
19 (2)(B)(ii) of this subsection, for which
20 assessment groundwater monitoring is
21 required.

22 “(ii) REQUIREMENTS.—

23 “(I) CLOSURE.—The surface im-
24 poundments identified in clause (i)
25 shall cease receiving coal combustion

1 residuals and initiate closure in ac-
2 cordance with paragraph (5) after al-
3 ternative management capacity at the
4 facility is available for the coal com-
5 bustion residuals and related mate-
6 rials managed in the impoundment.

7 “(II) BEST EFFORTS.—The al-
8 ternative management capacity shall
9 be developed as soon as practicable
10 with the owner or operator using best
11 efforts to design, obtain necessary
12 permits for, finance, construct, and
13 render operational the alternative
14 management capacity.

15 “(III) ALTERNATIVE CAPACITY
16 MANAGEMENT PLAN.—The owner or
17 operator shall, in collaboration with
18 the implementing agency, prepare a
19 written plan that describes the steps
20 necessary to develop the alternative
21 management capacity and includes a
22 schedule for completion.

23 “(IV) PUBLIC PARTICIPATION.—
24 The plan described in subclause (III)
25 shall be subject to public notice and

1 comment under the public participa-
2 tion process described in subsection
3 (b)(2)(B)(iii)(III) or in subsection
4 (e)(6), as applicable.

5 “(5) CLOSURE.—

6 “(A) IN GENERAL.—If it is determined by
7 the implementing agency that a structure
8 should close because the requirements of a coal
9 combustion residuals permit program are not
10 being satisfied with respect to such structure,
11 or if it is determined by the owner or operator
12 that a structure should close, the time period
13 and method for the closure of such structure
14 shall be set forth in a closure plan that estab-
15 lishes a deadline for completion of closure as
16 soon as practicable and that takes into account
17 the nature and the site-specific characteristics
18 of the structure to be closed.

19 “(B) SURFACE IMPOUNDMENT.—In the
20 case of a surface impoundment, the closure plan
21 under subparagraph (A) shall require, at a min-
22 imum, the removal of liquid and the stabiliza-
23 tion of remaining waste, as necessary to sup-
24 port the final cover.

1 “(d) FEDERAL REVIEW OF STATE PERMIT PRO-
2 GRAMS.—

3 “(1) IN GENERAL.—The Administrator shall
4 provide to a State written notice and an opportunity
5 to remedy deficiencies in accordance with paragraph
6 (3) if at any time the State—

7 “(A) does not satisfy the notification re-
8 quirement under subsection (b)(1);

9 “(B) has not submitted a certification re-
10 quired under subsection (b)(2);

11 “(C) does not satisfy the maintenance re-
12 quirement under subsection (b)(3);

13 “(D) is not implementing a coal combus-
14 tion residuals permit program, with respect to
15 which the State has submitted a certification
16 under subsection (b)(2), that meets the require-
17 ments described in subsection (c);

18 “(E) is not implementing a coal combus-
19 tion residuals permit program, with respect to
20 which the State has submitted a certification
21 under subsection (b)(2)—

22 “(i) that is consistent with such cer-
23 tification; and

1 “(ii) for which the State continues to
2 have in effect statutes or regulations nec-
3 essary to implement such program; or

4 “(F) does not make available to the Ad-
5 ministrator, within 90 days of a written re-
6 quest, specific information necessary for the
7 Administrator to ascertain whether the State
8 has satisfied the requirements described in sub-
9 paragraphs (A) through (E).

10 “(2) REQUEST.—If a request described in para-
11 graph (1)(F) is proposed pursuant to a petition to
12 the Administrator, the Administrator shall only
13 make the request if the Administrator does not pos-
14 sess the information necessary to ascertain whether
15 the State has satisfied the requirements described in
16 subparagraphs (A) through (E) of such paragraph.

17 “(3) CONTENTS OF NOTICE; DEADLINE FOR RE-
18 SPONSE.—A notice provided under paragraph (1)
19 shall—

20 “(A) include findings of the Administrator
21 detailing any applicable deficiencies described in
22 subparagraphs (A) through (F) of paragraph
23 (1); and

24 “(B) identify, in collaboration with the
25 State, a reasonable deadline by which the State

1 shall remedy such applicable deficiencies, which
2 shall be—

3 “(i) in the case of a deficiency de-
4 scribed in subparagraphs (A) through (E)
5 of paragraph (1), not earlier than 180
6 days after the date on which the State re-
7 ceives the notice; and

8 “(ii) in the case of a deficiency de-
9 scribed in paragraph (1)(F), not later than
10 90 days after the date on which the State
11 receives the notice.

12 “(4) CRITERIA FOR DETERMINING DEFICIENCY
13 OF STATE PERMIT PROGRAM.—In making a deter-
14 mination whether a State has failed to satisfy the re-
15 quirements described in subparagraphs (A) through
16 (E) of paragraph (1), or a determination under sub-
17 section (e)(1)(B), the Administrator shall consider,
18 as appropriate—

19 “(A) whether the State’s statutes or regu-
20 lations to implement a coal combustion residu-
21 als permit program are not sufficient to meet
22 the requirements described in subsection (c) be-
23 cause of—

1 “(i) failure of the State to promulgate
2 or enact new statutes or regulations when
3 necessary; or

4 “(ii) action by a State legislature or
5 court striking down or limiting such State
6 statutes or regulations;

7 “(B) whether the operation of the State
8 coal combustion residuals permit program fails
9 to comply with the requirements of subsection
10 (c) because of—

11 “(i) failure of the State to issue per-
12 mits as required in subsection (c)(1)(E);

13 “(ii) repeated issuance of permits by
14 the State which do not meet the require-
15 ments of subsection (c);

16 “(iii) failure of the State to comply
17 with the public participation requirements
18 of this section; or

19 “(iv) failure of the State to implement
20 corrective action requirements as described
21 in subsection (c)(2)(B); and

22 “(C) whether the enforcement of a State
23 coal combustion residuals permit program fails
24 to comply with the requirements of this section
25 because of—

1 “(i) failure to act on violations of per-
2 mits, as identified by the State; or

3 “(ii) repeated failure by the State to
4 inspect or otherwise determine compliance
5 pursuant to the process identified in sub-
6 section (b)(2)(B)(iii)(I).

7 “(e) IMPLEMENTATION BY ADMINISTRATOR.—

8 “(1) FEDERAL BACKSTOP AUTHORITY.—The
9 Administrator shall implement a coal combustion re-
10 siduals permit program for a State only if—

11 “(A) the Governor of the State notifies the
12 Administrator under subsection (b)(1) that the
13 State will not adopt and implement a permit
14 program;

15 “(B) the State has received a notice under
16 subsection (d) and the Administrator deter-
17 mines, after providing a 30-day period for no-
18 tice and public comment, that the State has
19 failed, by the deadline identified in the notice
20 under subsection (d)(3)(B), to remedy the defi-
21 ciencies detailed in the notice under subsection
22 (d)(3)(A); or

23 “(C) the State informs the Administrator,
24 in writing, that such State will no longer imple-
25 ment such a permit program.

1 “(2) REVIEW.—A State may obtain a review of
2 a determination by the Administrator under this
3 subsection as if the determination was a final regu-
4 lation for purposes of section 7006.

5 “(3) OTHER STRUCTURES.—For structures
6 that receive coal combustion residuals on or after
7 the date of enactment of this section located on
8 property within the exterior boundaries of a State
9 that the State does not have authority or jurisdiction
10 to regulate, the Administrator shall implement a coal
11 combustion residuals permit program only for those
12 structures.

13 “(4) REQUIREMENTS.—If the Administrator
14 implements a coal combustion residuals permit pro-
15 gram for a State under paragraph (1) or (3), the
16 permit program shall consist of the requirements de-
17 scribed in subsection (c).

18 “(5) ENFORCEMENT.—

19 “(A) IN GENERAL.—If the Administrator
20 implements a coal combustion residuals permit
21 program for a State under paragraph (1)—

22 “(i) the authorities referred to in sec-
23 tion 4005(c)(2)(A) shall apply with respect
24 to coal combustion residuals and structures
25 for which the Administrator is imple-

1 menting the coal combustion residuals per-
2 mit program; and

3 “(ii) the Administrator may use those
4 authorities to inspect, gather information,
5 and enforce the requirements of this sec-
6 tion in the State.

7 “(B) OTHER STRUCTURES.—If the Admin-
8 istrator implements a coal combustion residuals
9 permit program under paragraph (3)—

10 “(i) the authorities referred to in sec-
11 tion 4005(c)(2)(A) shall apply with respect
12 to coal combustion residuals and structures
13 for which the Administrator is imple-
14 menting the coal combustion residuals per-
15 mit program; and

16 “(ii) the Administrator may use those
17 authorities to inspect, gather information,
18 and enforce the requirements of this sec-
19 tion for the structures for which the Ad-
20 ministrator is implementing the coal com-
21 bustion residuals permit program.

22 “(6) PUBLIC PARTICIPATION PROCESS.—If the
23 Administrator implements a coal combustion residu-
24 als permit program for a State under this sub-
25 section, the Administrator shall provide a 30-day pe-

1 riod for the public participation process required in
2 paragraphs (1)(F)(i), (4)(C)(i), and (4)(E)(ii)(IV) of
3 subsection (c).

4 “(f) STATE CONTROL AFTER IMPLEMENTATION BY
5 ADMINISTRATOR.—

6 “(1) STATE CONTROL.—

7 “(A) NEW ADOPTION, OR RESUMPTION OF,
8 AND IMPLEMENTATION BY STATE.—For a State
9 for which the Administrator is implementing a
10 coal combustion residuals permit program
11 under subsection (e)(1)(A), or subsection
12 (e)(1)(C), the State may adopt and implement
13 such a permit program by—

14 “(i) notifying the Administrator that
15 the State will adopt and implement such a
16 permit program;

17 “(ii) not later than 6 months after the
18 date of such notification, submitting to the
19 Administrator a certification under sub-
20 section (b)(2); and

21 “(iii) receiving from the Adminis-
22 trator—

23 “(I) a determination, after pro-
24 viding a 30-day period for notice and
25 public comment, that the State coal

1 combustion residuals permit program
2 meets the requirements described in
3 subsection (c); and

4 “(II) a timeline for transition of
5 control of the coal combustion residu-
6 als permit program.

7 “(B) REMEDYING DEFICIENT PERMIT PRO-
8 GRAM.—For a State for which the Adminis-
9 trator is implementing a coal combustion re-
10 siduals permit program under subsection
11 (e)(1)(B), the State may adopt and implement
12 such a permit program by—

13 “(i) remedying only the deficiencies
14 detailed in the notice pursuant to sub-
15 section (d)(3)(A); and

16 “(ii) receiving from the Adminis-
17 trator—

18 “(I) a determination, after pro-
19 viding a 30-day period for notice and
20 public comment, that the deficiencies
21 detailed in such notice have been rem-
22 edied; and

23 “(II) a timeline for transition of
24 control of the coal combustion residu-
25 als permit program.

1 “(2) REVIEW OF DETERMINATION.—

2 “(A) DETERMINATION REQUIRED.—The
3 Administrator shall make a determination
4 under paragraph (1) not later than 90 days
5 after the date on which the State submits a cer-
6 tification under paragraph (1)(A)(ii), or notifies
7 the Administrator that the deficiencies have
8 been remedied pursuant to paragraph (1)(B)(i),
9 as applicable.

10 “(B) REVIEW.—A State may obtain a re-
11 view of a determination by the Administrator
12 under paragraph (1) as if such determination
13 was a final regulation for purposes of section
14 7006.

15 “(3) IMPLEMENTATION DURING TRANSITION.—

16 “(A) EFFECT ON ACTIONS AND ORDERS.—
17 Program requirements of, and actions taken or
18 orders issued pursuant to, a coal combustion re-
19 siduals permit program shall remain in effect
20 if—

21 “(i) a State takes control of its coal
22 combustion residuals permit program from
23 the Administrator under paragraph (1); or

1 “(ii) the Administrator takes control
2 of a coal combustion residuals permit pro-
3 gram from a State under subsection (e).

4 “(B) CHANGE IN REQUIREMENTS.—Sub-
5 paragraph (A) shall apply to such program re-
6 quirements, actions, and orders until such time
7 as—

8 “(i) the implementing agency changes
9 the requirements of the coal combustion
10 residuals permit program with respect to
11 the basis for the action or order; or

12 “(ii) the State or the Administrator,
13 whichever took the action or issued the
14 order, certifies the completion of a correc-
15 tive action that is the subject of the action
16 or order.

17 “(4) SINGLE PERMIT PROGRAM.—If a State
18 adopts and implements a coal combustion residuals
19 permit program under this subsection, the Adminis-
20 trator shall cease to implement the permit program
21 implemented under subsection (e)(1) for such State.

22 “(g) EFFECT ON DETERMINATION UNDER 4005(c)
23 OR 3006.—The Administrator shall not consider the im-
24 plementation of a coal combustion residuals permit pro-
25 gram by the Administrator under subsection (e) in making

1 a determination of approval for a permit program or other
2 system of prior approval and conditions under section
3 4005(e) or of authorization for a program under section
4 3006.

5 “(h) AUTHORITY.—

6 “(1) STATE AUTHORITY.—Nothing in this sec-
7 tion shall preclude or deny any right of any State to
8 adopt or enforce any regulation or requirement re-
9 specting coal combustion residuals that is more
10 stringent or broader in scope than a regulation or
11 requirement under this section.

12 “(2) AUTHORITY OF THE ADMINISTRATOR.—

13 “(A) IN GENERAL.—Except as provided in
14 subsections (d) and (e) and section 6005, the
15 Administrator shall, with respect to the regula-
16 tion of coal combustion residuals, defer to the
17 States pursuant to this section.

18 “(B) IMMINENT HAZARD.—Nothing in this
19 section shall be construed as affecting the au-
20 thority of the Administrator under section 7003
21 with respect to coal combustion residuals.

22 “(C) ENFORCEMENT ASSISTANCE ONLY
23 UPON REQUEST.—Upon request from the head
24 of a lead State agency that is implementing a
25 coal combustion residuals permit program, the

1 Administrator may provide to such State agen-
2 cy only the enforcement assistance requested.

3 “(D) CONCURRENT ENFORCEMENT.—Ex-
4 cept as provided in subparagraph (C), the Ad-
5 ministrator shall not have concurrent enforce-
6 ment authority when a State is implementing a
7 coal combustion residuals permit program, in-
8 cluding during any period of interim operation
9 described in subsection (c)(3)(D).

10 “(E) OTHER AUTHORITY.—The Adminis-
11 trator shall not have authority to finalize the
12 proposed rule published at pages 35128
13 through 35264 of volume 75 of the Federal
14 Register (June 21, 2010).

15 “(F) OTHER RESPONSE AUTHORITY.—
16 Nothing in this section shall be construed as af-
17 fecting the authority of the Administrator
18 under the Comprehensive Environmental Re-
19 sponse, Compensation, and Liability Act of
20 1980 (42 U.S.C. 9601 et seq.) with respect to
21 coal combustion residuals.

22 “(3) CITIZEN SUITS.—Nothing in this section
23 shall be construed to affect the authority of a person
24 to commence a civil action in accordance with sec-
25 tion 7002.

1 “(i) MINE RECLAMATION ACTIVITIES.—A coal com-
2 bustion residuals permit program implemented by the Ad-
3 ministrator under subsection (e) shall not apply to the uti-
4 lization, placement, and storage of coal combustion residu-
5 als at surface mining and reclamation operations.

6 “(j) DEFINITIONS.—In this section:

7 “(1) COAL COMBUSTION RESIDUALS.—The
8 term ‘coal combustion residuals’ means—

9 “(A) the solid wastes listed in section
10 3001(b)(3)(A)(i), including recoverable mate-
11 rials from such wastes;

12 “(B) coal combustion wastes that are co-
13 managed with wastes produced in conjunction
14 with the combustion of coal, provided that such
15 wastes are not segregated and disposed of sepa-
16 rately from the coal combustion wastes and
17 comprise a relatively small proportion of the
18 total wastes being disposed in the structure;

19 “(C) fluidized bed combustion wastes;

20 “(D) wastes from the co-burning of coal
21 with non-hazardous secondary materials, pro-
22 vided that coal makes up at least 50 percent of
23 the total fuel burned; and

1 “(E) wastes from the co-burning of coal
2 with materials described in subparagraph (A)
3 that are recovered from monofills.

4 “(2) COAL COMBUSTION RESIDUALS PERMIT
5 PROGRAM.—The term ‘coal combustion residuals
6 permit program’ means all of the authorities, activi-
7 ties, and procedures that comprise the system of
8 prior approval and conditions implemented by or for
9 a State to regulate the management and disposal of
10 coal combustion residuals.

11 “(3) CODE OF FEDERAL REGULATIONS.—The
12 term ‘Code of Federal Regulations’ means the Code
13 of Federal Regulations (as in effect on the date of
14 enactment of this section) or any successor regula-
15 tions.

16 “(4) IMPLEMENTING AGENCY.—The term ‘im-
17 plementing agency’ means the agency responsible for
18 implementing a coal combustion residuals permit
19 program for a State, which shall either be the lead
20 State implementing agency identified under sub-
21 section (b)(2)(B)(i) or the Administrator pursuant
22 to subsection (e).

23 “(5) PERMIT; PRIOR APPROVAL AND CONDI-
24 TIONS.—Except as provided in subsections (b)(3)
25 and (g), the terms ‘permit’ and ‘prior approval and

1 conditions' mean any authorization, license, or equiv-
2 alent control document that incorporates the re-
3 quirements of subsection (c).

4 “(6) REVISED CRITERIA.—The term ‘revised
5 criteria’ means the criteria promulgated for munic-
6 ipal solid waste landfill units under section 4004(a)
7 and under section 1008(a)(3), as revised under sec-
8 tion 4010(c).

9 “(7) STRUCTURE.—

10 “(A) IN GENERAL.—Except as provided in
11 subparagraph (B), the term ‘structure’ means a
12 landfill, surface impoundment, or other land-
13 based unit which receives, or is intended to re-
14 ceive, coal combustion residuals.

15 “(B) DE MINIMIS RECEIPT.—The term
16 ‘structure’ does not include any land-based unit
17 that receives only de minimis quantities of coal
18 combustion residuals if the presence of coal
19 combustion residuals is incidental to the mate-
20 rial managed in the unit.”.

21 (b) CONFORMING AMENDMENT.—The table of con-
22 tents contained in section 1001 of the Solid Waste Dis-
23 posal Act is amended by inserting after the item relating
24 to section 4010 the following:

“Sec. 4011. Management and disposal of coal combustion residuals.”.

1 **SEC. 2402. 2000 REGULATORY DETERMINATION.**

2 Nothing in this subtitle, or the amendments made by
3 this subtitle, shall be construed to alter in any manner
4 the Environmental Protection Agency's regulatory deter-
5 mination entitled "Notice of Regulatory Determination on
6 Wastes From the Combustion of Fossil Fuels", published
7 at 65 Fed. Reg. 32214 (May 22, 2000), that the fossil
8 fuel combustion wastes addressed in that determination
9 do not warrant regulation under subtitle C of the Solid
10 Waste Disposal Act (42 U.S.C. 6921 et seq.).

11 **SEC. 2403. TECHNICAL ASSISTANCE.**

12 Nothing in this subtitle, or the amendments made by
13 this subtitle, shall be construed to affect the authority of
14 a State to request, or the Administrator of the Environ-
15 mental Protection Agency to provide, technical assistance
16 under the Solid Waste Disposal Act (42 U.S.C. 6901 et
17 seq.).

18 **SEC. 2404. FEDERAL POWER ACT.**

19 Nothing in this subtitle, or the amendments made by
20 this subtitle, shall be construed to affect the obligations
21 of an owner or operator of a structure (as defined in sec-
22 tion 4011 of the Solid Waste Disposal Act, as added by
23 this subtitle) under section 215(b)(1) of the Federal
24 Power Act (16 U.S.C. 824o(b)(1)).

1 **TITLE III—REDUCING**
2 **FRIVOLOUS LEGAL COSTS**
3 **Subtitle A—Lawsuit Abuse**
4 **Reduction Act**

5 **SEC. 3101. ATTORNEY ACCOUNTABILITY.**

6 (a) SANCTIONS UNDER RULE 11.—Rule 11(c) of the
7 Federal Rules of Civil Procedure is amended—

8 (1) in paragraph (1), by striking “may” and in-
9 serting “shall”;

10 (2) in paragraph (2), by striking “Rule 5” and
11 all that follows through “motion.” and inserting
12 “Rule 5.”; and

13 (3) in paragraph (4), by striking “situated”
14 and all that follows through the end of the para-
15 graph and inserting “situated, and to compensate
16 the parties that were injured by such conduct. Sub-
17 ject to the limitations in paragraph (5), the sanction
18 shall consist of an order to pay to the party or par-
19 ties the amount of the reasonable expenses incurred
20 as a direct result of the violation, including reason-
21 able attorneys’ fees and costs. The court may also
22 impose additional appropriate sanctions, such as
23 striking the pleadings, dismissing the suit, or other
24 directives of a nonmonetary nature, or, if warranted

1 for effective deterrence, an order directing payment
2 of a penalty into the court.”.

3 (b) **RULE OF CONSTRUCTION.**—Nothing in this sub-
4 title or an amendment made by this subtitle shall be con-
5 strued to bar or impede the assertion or development of
6 new claims, defenses, or remedies under Federal, State,
7 or local laws, including civil rights laws, or under the Con-
8 stitution of the United States.

9 **Subtitle B—Furthering Asbestos**
10 **Claim Transparency in Bankruptcy**

11 **SEC. 3201. AMENDMENTS.**

12 Section 524(g) of title 11, United States Code, is
13 amended by adding at the end the following:

14 “(8) A trust described in paragraph (2) shall, subject
15 to section 107—

16 “(A) file with the bankruptcy court, not later
17 than 60 days after the end of every quarter, a report
18 that shall be made available on the court’s public
19 docket and with respect to such quarter—

20 “(i) describes each demand the trust re-
21 ceived from, including the name and exposure
22 history of, a claimant and the basis for any
23 payment from the trust made to such claimant;
24 and

1 “(ii) does not include any confidential med-
2 ical record or the claimant’s full social security
3 number; and

4 “(B) upon written request, and subject to pay-
5 ment (demanded at the option of the trust) for any
6 reasonable cost incurred by the trust to comply with
7 such request, provide in a timely manner any infor-
8 mation related to payment from, and demands for
9 payment from, such trust, subject to appropriate
10 protective orders, to any party to any action in law
11 or equity if the subject of such action concerns li-
12 ability for asbestos exposure.”.

13 **SEC. 3202. EFFECTIVE DATE; APPLICATION OF AMEND-**
14 **MENTS.**

15 (a) **EFFECTIVE DATE.**—Except as provided in sub-
16 section (b), this subtitle and the amendments made by this
17 subtitle shall take effect on the date of the enactment of
18 this subtitle.

19 (b) **APPLICATION OF AMENDMENTS.**—The amend-
20 ments made by this subtitle shall apply with respect to
21 cases commenced under title 11 of the United States Code
22 before, on, or after the date of the enactment of this sub-
23 title.

1 **Subtitle C—Innovation Act**

2 **SEC. 3301. DEFINITIONS.**

3 In this subtitle:

4 (1) **DIRECTOR.**—The term “Director” means
5 the Under Secretary of Commerce for Intellectual
6 Property and Director of the United States Patent
7 and Trademark Office.

8 (2) **OFFICE.**—The term “Office” means the
9 United States Patent and Trademark Office.

10 **SEC. 3302. PATENT INFRINGEMENT ACTIONS.**

11 (a) **PLEADING REQUIREMENTS.**—

12 (1) **AMENDMENT.**—Chapter 29 of title 35,
13 United States Code, is amended by inserting after
14 section 281 the following:

15 **“§ 281A. Pleading requirements for patent infringe-**
16 **ment actions**

17 “(a) **PLEADING REQUIREMENTS.**—Except as pro-
18 vided in subsection (b), in a civil action in which a party
19 asserts a claim for relief arising under any Act of Con-
20 gress relating to patents, a party alleging infringement
21 shall include in the initial complaint, counterclaim, or
22 cross-claim for patent infringement, unless the informa-
23 tion is not reasonably accessible to such party, the fol-
24 lowing:

1 “(1) An identification of each patent allegedly
2 infringed.

3 “(2) An identification of each claim of each pat-
4 ent identified under paragraph (1) that is allegedly
5 infringed.

6 “(3) For each claim identified under paragraph
7 (2), an identification of each accused process, ma-
8 chine, manufacture, or composition of matter (re-
9 ferred to in this section as an ‘accused instrumen-
10 tality’) alleged to infringe the claim.

11 “(4) For each accused instrumentality identi-
12 fied under paragraph (3), an identification with par-
13 ticularity, if known, of—

14 “(A) the name or model number of each
15 accused instrumentality; or

16 “(B) if there is no name or model number,
17 a description of each accused instrumentality.

18 “(5) For each accused instrumentality identi-
19 fied under paragraph (3), a clear and concise state-
20 ment of—

21 “(A) where each element of each claim
22 identified under paragraph (2) is found within
23 the accused instrumentality; and

24 “(B) with detailed specificity, how each
25 limitation of each claim identified under para-

1 graph (2) is met by the accused instrumen-
2 tality.

3 “(6) For each claim of indirect infringement, a
4 description of the acts of the alleged indirect in-
5 fringer that contribute to or are inducing the direct
6 infringement.

7 “(7) A description of the authority of the party
8 alleging infringement to assert each patent identified
9 under paragraph (1) and of the grounds for the
10 court’s jurisdiction.

11 “(8) A clear and concise description of the prin-
12 cipal business, if any, of the party alleging infringe-
13 ment.

14 “(9) A list of each complaint filed, of which the
15 party alleging infringement has knowledge, that as-
16 serts or asserted any of the patents identified under
17 paragraph (1).

18 “(10) For each patent identified under para-
19 graph (1), whether a standard-setting body has spe-
20 cifically declared such patent to be essential, poten-
21 tially essential, or having potential to become essen-
22 tial to that standard-setting body, and whether the
23 United States Government or a foreign government
24 has imposed specific licensing requirements with re-
25 spect to such patent.

1 “(b) INFORMATION NOT READILY ACCESSIBLE.—If
2 information required to be disclosed under subsection (a)
3 is not readily accessible to a party, that information may
4 instead be generally described, along with an explanation
5 of why such undisclosed information was not readily acces-
6 sible, and of any efforts made by such party to access such
7 information.

8 “(c) CONFIDENTIAL INFORMATION.—A party re-
9 quired to disclose information described under subsection
10 (a) may file, under seal, information believed to be con-
11 fidential, with a motion setting forth good cause for such
12 sealing. If such motion is denied by the court, the party
13 may seek to file an amended complaint.

14 “(d) EXEMPTION.—A civil action that includes a
15 claim for relief arising under section 271(e)(2) shall not
16 be subject to the requirements of subsection (a).”.

17 (2) CONFORMING AMENDMENT.—The table of
18 sections for chapter 29 of title 35, United States
19 Code, is amended by inserting after the item relating
20 to section 281 the following new item:

“281A. Pleading requirements for patent infringement actions.”.

21 (b) FEES AND OTHER EXPENSES.—

22 (1) AMENDMENT.—Section 285 of title 35,
23 United States Code, is amended to read as follows:

1 **“§ 285. Fees and other expenses**

2 “(a) AWARD.—The court shall award, to a prevailing
3 party, reasonable fees and other expenses incurred by that
4 party in connection with a civil action in which any party
5 asserts a claim for relief arising under any Act of Con-
6 gress relating to patents, unless the court finds that the
7 position and conduct of the nonprevailing party or parties
8 were reasonably justified in law and fact or that special
9 circumstances (such as severe economic hardship to a
10 named inventor) make an award unjust.

11 “(b) CERTIFICATION AND RECOVERY.—Upon motion
12 of any party to the action, the court shall require another
13 party to the action to certify whether or not the other
14 party will be able to pay an award of fees and other ex-
15 penses if such an award is made under subsection (a). If
16 a nonprevailing party is unable to pay an award that is
17 made against it under subsection (a), the court may make
18 a party that has been joined under section 299(d) with
19 respect to such party liable for the unsatisfied portion of
20 the award.

21 “(c) COVENANT NOT TO SUE.—A party to a civil ac-
22 tion that asserts a claim for relief arising under any Act
23 of Congress relating to patents against another party, and
24 that subsequently unilaterally extends to such other party
25 a covenant not to sue for infringement with respect to the
26 patent or patents at issue, shall be deemed to be a nonpre-

1 vailing party (and the other party the prevailing party)
2 for purposes of this section, unless the party asserting
3 such claim would have been entitled, at the time that such
4 covenant was extended, to voluntarily dismiss the action
5 or claim without a court order under Rule 41 of the Fed-
6 eral Rules of Civil Procedure.”.

7 (2) CONFORMING AMENDMENT AND AMEND-
8 MENT.—

9 (A) CONFORMING AMENDMENT.—The item
10 relating to section 285 of the table of sections
11 for chapter 29 of title 35, United States Code,
12 is amended to read as follows:

“285. Fees and other expenses.”.

13 (B) AMENDMENT.—Section 273 of title
14 35, United States Code, is amended by striking
15 subsections (f) and (g).

16 (3) EFFECTIVE DATE.—The amendments made
17 by this subsection shall take effect on the date of the
18 enactment of this Act and shall apply to any action
19 for which a complaint is filed on or after the first
20 day of the 6-month period ending on that effective
21 date.

22 (c) JOINDER OF INTERESTED PARTIES.—Section
23 299 of title 35, United States Code, is amended by adding
24 at the end the following new subsection:

25 “(d) JOINDER OF INTERESTED PARTIES.—

1 “(1) JOINDER.—In a civil action arising under
2 any Act of Congress relating to patents in which
3 fees and other expenses have been awarded under
4 section 285 to a prevailing party defending against
5 an allegation of infringement of a patent claim, and
6 in which the nonprevailing party alleging infringe-
7 ment is unable to pay the award of fees and other
8 expenses, the court shall grant a motion by the pre-
9 vailing party to join an interested party if such pre-
10 vailing party shows that the nonprevailing party has
11 no substantial interest in the subject matter at issue
12 other than asserting such patent claim in litigation.

13 “(2) LIMITATION ON JOINDER.—

14 “(A) DISCRETIONARY DENIAL OF MO-
15 TION.—The court may deny a motion to join an
16 interested party under paragraph (1) if—

17 “(i) the interested party is not subject
18 to service of process; or

19 “(ii) joinder under paragraph (1)
20 would deprive the court of subject matter
21 jurisdiction or make venue improper.

22 “(B) REQUIRED DENIAL OF MOTION.—The
23 court shall deny a motion to join an interested
24 party under paragraph (1) if—

1 “(i) the interested party did not time-
2 ly receive the notice required by paragraph
3 (3); or

4 “(ii) within 30 days after receiving
5 the notice required by paragraph (3), the
6 interested party renounces, in writing and
7 with notice to the court and the parties to
8 the action, any ownership, right, or direct
9 financial interest (as described in para-
10 graph (4)) that the interested party has in
11 the patent or patents at issue.

12 “(3) NOTICE REQUIREMENT.—An interested
13 party may not be joined under paragraph (1) unless
14 it has been provided actual notice, within 30 days
15 after the date on which it has been identified in the
16 initial disclosure provided under section 290(b), that
17 it has been so identified and that such party may
18 therefore be an interested party subject to joinder
19 under this subsection. Such notice shall be provided
20 by the party who subsequently moves to join the in-
21 terested party under paragraph (1), and shall in-
22 clude language that—

23 “(A) identifies the action, the parties
24 thereto, the patent or patents at issue, and the

1 pleading or other paper that identified the
2 party under section 290(b); and

3 “(B) informs the party that it may be
4 joined in the action and made subject to paying
5 an award of fees and other expenses under sec-
6 tion 285(b) if—

7 “(i) fees and other expenses are
8 awarded in the action against the party al-
9 leging infringement of the patent or pat-
10 ents at issue under section 285(a);

11 “(ii) the party alleging infringement is
12 unable to pay the award of fees and other
13 expenses;

14 “(iii) the party receiving notice under
15 this paragraph is determined by the court
16 to be an interested party; and

17 “(iv) the party receiving notice under
18 this paragraph has not, within 30 days
19 after receiving such notice, renounced in
20 writing, and with notice to the court and
21 the parties to the action, any ownership,
22 right, or direct financial interest (as de-
23 scribed in paragraph (4)) that the inter-
24 ested party has in the patent or patents at
25 issue.

1 “(4) INTERESTED PARTY DEFINED.—In this
2 subsection, the term ‘interested party’ means a per-
3 son, other than the party alleging infringement,
4 that—

5 “(A) is an assignee of the patent or pat-
6 ents at issue;

7 “(B) has a right, including a contingent
8 right, to enforce or sublicense the patent or pat-
9 ents at issue; or

10 “(C) has a direct financial interest in the
11 patent or patents at issue, including the right
12 to any part of an award of damages or any part
13 of licensing revenue, except that a person with
14 a direct financial interest does not include—

15 “(i) an attorney or law firm providing
16 legal representation in the civil action de-
17 scribed in paragraph (1) if the sole basis
18 for the financial interest of the attorney or
19 law firm in the patent or patents at issue
20 arises from the attorney or law firm’s re-
21 ceipt of compensation reasonably related to
22 the provision of the legal representation; or

23 “(ii) a person whose sole financial in-
24 terest in the patent or patents at issue is
25 ownership of an equity interest in the

1 party alleging infringement, unless such
2 person also has the right or ability to influ-
3 ence, direct, or control the civil action.”.

4 (d) DISCOVERY LIMITS.—

5 (1) AMENDMENT.—Chapter 29 of title 35,
6 United States Code, is amended by adding at the
7 end the following new section:

8 **“§ 299A. Discovery in patent infringement action**

9 “(a) DISCOVERY IN PATENT INFRINGEMENT AC-
10 TION.—Except as provided in subsections (b) and (c), in
11 a civil action arising under any Act of Congress relating
12 to patents, if the court determines that a ruling relating
13 to the construction of terms used in a patent claim as-
14 serted in the complaint is required, discovery shall be lim-
15 ited, until such ruling is issued, to information necessary
16 for the court to determine the meaning of the terms used
17 in the patent claim, including any interpretation of those
18 terms used to support the claim of infringement.

19 “(b) DISCRETION TO EXPAND SCOPE OF DIS-
20 COVERY.—

21 “(1) TIMELY RESOLUTION OF ACTIONS.—In the
22 case of an action under any provision of Federal law
23 (including an action that includes a claim for relief
24 arising under section 271(e)), for which resolution
25 within a specified period of time of a civil action

1 arising under any Act of Congress relating to pat-
2 ents will necessarily affect the rights of a party with
3 respect to the patent, the court shall permit dis-
4 covery, in addition to the discovery authorized under
5 subsection (a), before the ruling described in sub-
6 section (a) is issued as necessary to ensure timely
7 resolution of the action.

8 “(2) RESOLUTION OF MOTIONS.—When nec-
9 essary to resolve a motion properly raised by a party
10 before a ruling relating to the construction of terms
11 described in subsection (a) is issued, the court may
12 allow limited discovery in addition to the discovery
13 authorized under subsection (a) as necessary to re-
14 solve the motion.

15 “(3) SPECIAL CIRCUMSTANCES.—In special cir-
16 cumstances that would make denial of discovery a
17 manifest injustice, the court may permit discovery,
18 in addition to the discovery authorized under sub-
19 section (a), as necessary to prevent the manifest in-
20 justice.

21 “(4) ACTIONS SEEKING RELIEF BASED ON COM-
22 PETITIVE HARM.—The limitation on discovery pro-
23 vided under subsection (a) shall not apply to an ac-
24 tion seeking a preliminary injunction to redress
25 harm arising from the use, sale, or offer for sale of

1 any allegedly infringing instrumentality that com-
2 petes with a product sold or offered for sale, or a
3 process used in manufacture, by a party alleging in-
4 fringement.

5 “(c) EXCLUSION FROM DISCOVERY LIMITATION.—
6 The parties may voluntarily consent to be excluded, in
7 whole or in part, from the limitation on discovery provided
8 under subsection (a) if at least one plaintiff and one de-
9 fendant enter into a signed stipulation, to be filed with
10 and signed by the court. With regard to any discovery ex-
11 cluded from the requirements of subsection (a) under the
12 signed stipulation, with respect to such parties, such dis-
13 covery shall proceed according to the Federal Rules of
14 Civil Procedure.”.

15 (2) CONFORMING AMENDMENT.—The table of
16 sections for chapter 29 of title 35, United States
17 Code, is amended by adding at the end the following
18 new item:

“299A. Discovery in patent infringement action.”.

19 (e) SENSE OF CONGRESS.—It is the sense of Con-
20 gress that it is an abuse of the patent system and against
21 public policy for a party to send out purposely evasive de-
22 mand letters to end users alleging patent infringement.
23 Demand letters sent should, at the least, include basic in-
24 formation about the patent in question, what is being in-
25 fringed, and how it is being infringed. Any actions or liti-

1 gation that stem from these types of purposely evasive de-
2 mand letters to end users should be considered a fraudu-
3 lent or deceptive practice and an exceptional circumstance
4 when considering whether the litigation is abusive.

5 (f) DEMAND LETTERS.—Section 284 of title 35,
6 United States Code, is amended—

7 (1) in the first undesignated paragraph, by
8 striking “Upon finding” and inserting “(a) IN GEN-
9 ERAL.—Upon finding”;

10 (2) in the second undesignated paragraph, by
11 striking “When the damages” and inserting “(b) AS-
12 SESSMENT BY COURT; TREBLE DAMAGES.—When
13 the damages”;

14 (3) by inserting after subsection (b), as des-
15 ignated by paragraph (2) of this subsection, the fol-
16 lowing:

17 “(c) WILLFUL INFRINGEMENT.—A claimant seeking
18 to establish willful infringement may not rely on evidence
19 of pre-suit notification of infringement unless that notifi-
20 cation identifies with particularity the asserted patent,
21 identifies the product or process accused, identifies the ul-
22 timate parent entity of the claimant, and explains with
23 particularity, to the extent possible following a reasonable
24 investigation or inquiry, how the product or process in-
25 fringes one or more claims of the patent.”; and

1 (4) in the last undesignated paragraph, by
2 striking “The court” and inserting “(d) EXPERT
3 TESTIMONY.—The court”.

4 (g) EFFECTIVE DATE.—Except as otherwise provided
5 in this section, the amendments made by this section shall
6 take effect on the date of the enactment of this Act and
7 shall apply to any action for which a complaint is filed
8 on or after that date.

9 **SEC. 3303. TRANSPARENCY OF PATENT OWNERSHIP.**

10 (a) AMENDMENTS.—Section 290 of title 35, United
11 States Code, is amended—

12 (1) in the heading, by striking “**suits**” and in-
13 serting “**suits; disclosure of interests**”;

14 (2) by striking “The clerks” and inserting “(a)
15 NOTICE OF PATENT SUITS.—The clerks”; and

16 (3) by adding at the end the following new sub-
17 sections:

18 “(b) INITIAL DISCLOSURE.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), upon the filing of an initial complaint for
21 patent infringement, the plaintiff shall disclose to
22 the Patent and Trademark Office, the court, and
23 each adverse party the identity of each of the fol-
24 lowing:

1 “(A) The assignee of the patent or patents
2 at issue.

3 “(B) Any entity with a right to sublicense
4 or enforce the patent or patents at issue.

5 “(C) Any entity, other than the plaintiff,
6 that the plaintiff knows to have a financial in-
7 terest in the patent or patents at issue or the
8 plaintiff.

9 “(D) The ultimate parent entity of any as-
10 signee identified under subparagraph (A) and
11 any entity identified under subparagraph (B) or
12 (C).

13 “(2) EXEMPTION.—The requirements of para-
14 graph (1) shall not apply with respect to a civil ac-
15 tion filed under subsection (a) that includes a cause
16 of action described under section 271(e)(2).

17 “(c) DISCLOSURE COMPLIANCE.—

18 “(1) PUBLICLY TRADED.—For purposes of sub-
19 section (b)(1)(C), if the financial interest is held by
20 a corporation traded on a public stock exchange, an
21 identification of the name of the corporation and the
22 public exchange listing shall satisfy the disclosure re-
23 quirement.

24 “(2) NOT PUBLICLY TRADED.—For purposes of
25 subsection (b)(1)(C), if the financial interest is not

1 held by a publicly traded corporation, the disclosure
2 shall satisfy the disclosure requirement if the infor-
3 mation identifies—

4 “(A) in the case of a partnership, the
5 name of the partnership and the name and cor-
6 respondence address of each partner or other
7 entity that holds more than a 5-percent share
8 of that partnership;

9 “(B) in the case of a corporation, the
10 name of the corporation, the location of incor-
11 poration, the address of the principal place of
12 business, and the name of each officer of the
13 corporation; and

14 “(C) for each individual, the name and
15 correspondence address of that individual.

16 “(d) ONGOING DUTY OF DISCLOSURE TO THE PAT-
17 ENT AND TRADEMARK OFFICE.—

18 “(1) IN GENERAL.—A plaintiff required to sub-
19 mit information under subsection (b) or a subse-
20 quent owner of the patent or patents at issue shall,
21 not later than 90 days after any change in the as-
22 signee of the patent or patents at issue or an entity
23 described under subparagraph (B) or (D) of sub-
24 section (b)(1), submit to the Patent and Trademark

1 Office the updated identification of such assignee or
2 entity.

3 “(2) FAILURE TO COMPLY.—With respect to a
4 patent for which the requirement of paragraph (1)
5 has not been met—

6 “(A) the plaintiff or subsequent owner
7 shall not be entitled to recover reasonable fees
8 and other expenses under section 285 or in-
9 creased damages under section 284 with respect
10 to infringing activities taking place during any
11 period of noncompliance with paragraph (1),
12 unless the denial of such damages or fees would
13 be manifestly unjust; and

14 “(B) the court shall award to a prevailing
15 party accused of infringement reasonable fees
16 and other expenses under section 285 that are
17 incurred to discover the updated assignee or en-
18 tity described under paragraph (1), unless such
19 sanctions would be unjust.

20 “(e) DEFINITIONS.—In this section:

21 “(1) FINANCIAL INTEREST.—The term ‘finan-
22 cial interest’—

23 “(A) means—

24 “(i) with regard to a patent or pat-
25 ents, the right of a person to receive pro-

1 ceeds related to the assertion of the patent
2 or patents, including a fixed or variable
3 portion of such proceeds; and

4 “(ii) with regard to the plaintiff, di-
5 rect or indirect ownership or control by a
6 person of more than 5 percent of such
7 plaintiff; and

8 “(B) does not mean—

9 “(i) ownership of shares or other in-
10 terests in a mutual or common investment
11 fund, unless the owner of such interest
12 participates in the management of such
13 fund; or

14 “(ii) the proprietary interest of a pol-
15 icyholder in a mutual insurance company
16 or of a depositor in a mutual savings asso-
17 ciation, or a similar proprietary interest,
18 unless the outcome of the proceeding could
19 substantially affect the value of such inter-
20 est.

21 “(2) PROCEEDING.—The term ‘proceeding’
22 means all stages of a civil action, including pretrial
23 and trial proceedings and appellate review.

24 “(3) ULTIMATE PARENT ENTITY.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘ultimate parent
3 entity’ has the meaning given such term in sec-
4 tion 801.1(a)(3) of title 16, Code of Federal
5 Regulations, or any successor regulation.

6 “(B) MODIFICATION OF DEFINITION.—The
7 Director may modify the definition of ‘ultimate
8 parent entity’ by regulation.”.

9 (b) TECHNICAL AND CONFORMING AMENDMENT.—
10 The item relating to section 290 in the table of sections
11 for chapter 29 of title 35, United States Code, is amended
12 to read as follows:

 “290. Notice of patent suits; disclosure of interests.”.

13 (c) REGULATIONS.—The Director may promulgate
14 such regulations as are necessary to establish a registra-
15 tion fee in an amount sufficient to recover the estimated
16 costs of administering subsections (b) through (e) of sec-
17 tion 290 of title 35, United States Code, as added by sub-
18 section (a), to facilitate the collection and maintenance of
19 the information required by such subsections, and to en-
20 sure the timely disclosure of such information to the pub-
21 lic.

22 (d) EFFECTIVE DATE.—The amendments made by
23 this section shall take effect upon the expiration of the
24 6-month period beginning on the date of the enactment

1 of this Act and shall apply to any action for which a com-
2 plaint is filed on or after such effective date.

3 **SEC. 3304. CUSTOMER-SUIT EXCEPTION.**

4 (a) AMENDMENT.—Section 296 of title 35, United
5 States Code, is amended to read as follows:

6 **“§ 296. Stay of action against customer**

7 “(a) STAY OF ACTION AGAINST CUSTOMER.—Except
8 as provided in subsection (d), in any civil action arising
9 under any Act of Congress relating to patents, the court
10 shall grant a motion to stay at least the portion of the
11 action against a covered customer related to infringement
12 of a patent involving a covered product or process if the
13 following requirements are met:

14 “(1) The covered manufacturer and the covered
15 customer consent in writing to the stay.

16 “(2) The covered manufacturer is a party to
17 the action or to a separate action involving the same
18 patent or patents related to the same covered prod-
19 uct or process.

20 “(3) The covered customer agrees to be bound
21 by any issues that the covered customer has in com-
22 mon with the covered manufacturer and are finally
23 decided as to the covered manufacturer in an action
24 described in paragraph (2).

1 “(4) The motion is filed after the first pleading
2 in the action but not later than the later of—

3 “(A) the 120th day after the date on which
4 the first pleading in the action is served that
5 specifically identifies the covered product or
6 process as a basis for the covered customer’s al-
7 leged infringement of the patent and that spe-
8 cifically identifies how the covered product or
9 process is alleged to infringe the patent; or

10 “(B) the date on which the first scheduling
11 order in the case is entered.

12 “(b) **APPLICABILITY OF STAY.**—A stay issued under
13 subsection (a) shall apply only to the patents, products,
14 systems, or components accused of infringement in the ac-
15 tion.

16 “(c) **LIFT OF STAY.**—

17 “(1) **IN GENERAL.**—A stay entered under this
18 section may be lifted upon grant of a motion based
19 on a showing that—

20 “(A) the action involving the covered man-
21 ufacturer will not resolve a major issue in suit
22 against the covered customer; or

23 “(B) the stay unreasonably prejudices and
24 would be manifestly unjust to the party seeking
25 to lift the stay.

1 “(2) SEPARATE MANUFACTURER ACTION IN-
2 VOLVED.—In the case of a stay entered based on the
3 participation of the covered manufacturer in a sepa-
4 rate action involving the same patent or patents re-
5 lated to the same covered product or process, a mo-
6 tion under this subsection may only be made if the
7 court in such separate action determines the show-
8 ing required under paragraph (1) has been met.

9 “(d) EXEMPTION.—This section shall not apply to an
10 action that includes a cause of action described under sec-
11 tion 271(e)(2).

12 “(e) CONSENT JUDGMENT.—If, following the grant
13 of a motion to stay under this section, the covered manu-
14 facturer seeks or consents to entry of a consent judgment
15 relating to one or more of the common issues that gave
16 rise to the stay, or declines to prosecute through appeal
17 a final decision as to one or more of the common issues
18 that gave rise to the stay, the court may, upon grant of
19 a motion, determine that such consent judgment or
20 unappealed final decision shall not be binding on the cov-
21 ered customer with respect to one or more of such common
22 issues based on a showing that such an outcome would
23 unreasonably prejudice and be manifestly unjust to the
24 covered customer in light of the circumstances of the case.

1 “(f) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion shall be construed to limit the ability of a court to
3 grant any stay, expand any stay granted under this sec-
4 tion, or grant any motion to intervene, if otherwise per-
5 mitted by law.

6 “(g) DEFINITIONS.—In this section:

7 “(1) COVERED CUSTOMER.—The term ‘covered
8 customer’ means a party accused of infringing a pat-
9 ent or patents in dispute based on a covered product
10 or process.

11 “(2) COVERED MANUFACTURER.—The term
12 ‘covered manufacturer’ means a person that manu-
13 factures or supplies, or causes the manufacture or
14 supply of, a covered product or process or a relevant
15 part thereof.

16 “(3) COVERED PRODUCT OR PROCESS.—The
17 term ‘covered product or process’ means a product,
18 process, system, service, component, material, or ap-
19 paratus, or relevant part thereof, that—

20 “(A) is alleged to infringe the patent or
21 patents in dispute; or

22 “(B) implements a process alleged to in-
23 fringe the patent or patents in dispute.”.

24 (b) CONFORMING AMENDMENT.—The table of sec-
25 tions for chapter 29 of title 35, United States Code, is

1 amended by striking the item relating to section 296 and
2 inserting the following:

“296. Stay of action against customer.”.

3 (c) **EFFECTIVE DATE.**—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act and shall apply to any action for which a com-
6 plaint is filed on or after the first day of the 30-day period
7 that ends on that date.

8 **SEC. 3305. PROCEDURES AND PRACTICES TO IMPLEMENT**
9 **RECOMMENDATIONS OF THE JUDICIAL CON-**
10 **FERENCE.**

11 (a) **JUDICIAL CONFERENCE RULES AND PROCE-**
12 **DURES ON DISCOVERY BURDENS AND COSTS.**—

13 (1) **RULES AND PROCEDURES.**—The Judicial
14 Conference of the United States, using existing re-
15 sources, shall develop rules and procedures to imple-
16 ment the issues and proposals described in para-
17 graph (2) to address the asymmetries in discovery
18 burdens and costs in any civil action arising under
19 any Act of Congress relating to patents. Such rules
20 and procedures shall include how and when payment
21 for document discovery in addition to the discovery
22 of core documentary evidence is to occur, and what
23 information must be presented to demonstrate finan-
24 cial capacity before permitting document discovery

1 in addition to the discovery of core documentary evi-
2 dence.

3 (2) RULES AND PROCEDURES TO BE CONSID-
4 ERED.—The rules and procedures required under
5 paragraph (1) should address each of the following
6 issues and proposals:

7 (A) DISCOVERY OF CORE DOCUMENTARY
8 EVIDENCE.—Whether and to what extent each
9 party to the action is entitled to receive core
10 documentary evidence and shall be responsible
11 for the costs of producing core documentary
12 evidence within the possession or control of
13 each such party, and whether and to what ex-
14 tent each party to the action may seek non-
15 documentary discovery as otherwise provided in
16 the Federal Rules of Civil Procedure.

17 (B) ELECTRONIC COMMUNICATION.—If the
18 parties determine that the discovery of elec-
19 tronic communication is appropriate, whether
20 such discovery shall occur after the parties have
21 exchanged initial disclosures and core documen-
22 tary evidence and whether such discovery shall
23 be in accordance with the following:

24 (i) Any request for the production of
25 electronic communication shall be specific

1 and may not be a general request for the
2 production of information relating to a
3 product or business.

4 (ii) Each request shall identify the
5 custodian of the information requested, the
6 search terms, and a timeframe. The par-
7 ties shall cooperate to identify the proper
8 custodians, the proper search terms, and
9 the proper timeframe.

10 (iii) A party may not submit produc-
11 tion requests to more than 5 custodians,
12 unless the parties jointly agree to modify
13 the number of production requests without
14 leave of the court.

15 (iv) The court may consider contested
16 requests for up to 5 additional custodians
17 per producing party, upon a showing of a
18 distinct need based on the size, complexity,
19 and issues of the case.

20 (v) If a party requests the discovery
21 of electronic communication for additional
22 custodians beyond the limits agreed to by
23 the parties or granted by the court, the re-
24 questing party shall bear all reasonable
25 costs caused by such additional discovery.

1 (C) ADDITIONAL DOCUMENT DISCOVERY.—

2 Whether the following should apply:

3 (i) IN GENERAL.—Each party to the
4 action may seek any additional document
5 discovery otherwise permitted under the
6 Federal Rules of Civil Procedure, if such
7 party bears the reasonable costs, including
8 reasonable attorney’s fees, of the additional
9 document discovery.

10 (ii) REQUIREMENTS FOR ADDITIONAL
11 DOCUMENT DISCOVERY.—Unless the par-
12 ties mutually agree otherwise, no party
13 may be permitted additional document dis-
14 covery unless such a party posts a bond, or
15 provides other security, in an amount suffi-
16 cient to cover the expected costs of such
17 additional document discovery, or makes a
18 showing to the court that such party has
19 the financial capacity to pay the costs of
20 such additional document discovery.

21 (iii) LIMITS ON ADDITIONAL DOCU-
22 MENT DISCOVERY.—A court, upon motion,
23 may determine that a request for addi-
24 tional document discovery is excessive, ir-
25 relevant, or otherwise abusive and may set

1 limits on such additional document dis-
2 covery.

3 (iv) GOOD CAUSE MODIFICATION.—A
4 court, upon motion and for good cause
5 shown, may modify the requirements of
6 subparagraphs (A) and (B) and any defini-
7 tion under paragraph (3). Not later than
8 30 days after the pretrial conference under
9 Rule 16 of the Federal Rules of Civil Pro-
10 cedure, the parties shall jointly submit any
11 proposed modifications of the requirements
12 of subparagraphs (A) and (B) and any def-
13 inition under paragraph (3), unless the
14 parties do not agree, in which case each
15 party shall submit any proposed modifica-
16 tion of such party and a summary of the
17 disagreement over the modification.

18 (v) COMPUTER CODE.—A court, upon
19 motion and for good cause shown, may de-
20 termine that computer code should be in-
21 cluded in the discovery of core documen-
22 tary evidence. The discovery of computer
23 code shall occur after the parties have ex-
24 changed initial disclosures and other core
25 documentary evidence.

1 (D) DISCOVERY SEQUENCE AND SCOPE.—
2 Whether the parties shall discuss and address
3 in the written report filed pursuant to Rule
4 26(f) of the Federal Rules of Civil Procedure
5 the views and proposals of each party on the
6 following:

7 (i) When the discovery of core docu-
8 mentary evidence should be completed.

9 (ii) Whether additional document dis-
10 covery will be sought under subparagraph
11 (C).

12 (iii) Any issues about infringement,
13 invalidity, or damages that, if resolved be-
14 fore the additional discovery described in
15 subparagraph (C) commences, might sim-
16 plify or streamline the case, including the
17 identification of any terms or phrases re-
18 lating to any patent claim at issue to be
19 construed by the court and whether the
20 early construction of any of those terms or
21 phrases would be helpful.

22 (3) DEFINITIONS.—In this subsection:

23 (A) CORE DOCUMENTARY EVIDENCE.—The
24 term “core documentary evidence”—

25 (i) includes—

1 (I) documents relating to the
2 conception of, reduction to practice of,
3 and application for, the patent or pat-
4 ents at issue;

5 (II) documents sufficient to show
6 the technical operation of the product
7 or process identified in the complaint
8 as infringing the patent or patents at
9 issue;

10 (III) documents relating to po-
11 tentially invalidating prior art;

12 (IV) documents relating to any
13 licensing of, or other transfer of rights
14 to, the patent or patents at issue be-
15 fore the date on which the complaint
16 is filed;

17 (V) documents sufficient to show
18 profit attributable to the claimed in-
19 vention of the patent or patents at
20 issue;

21 (VI) documents relating to any
22 knowledge by the accused infringer of
23 the patent or patents at issue before
24 the date on which the complaint is
25 filed;

1 (VII) documents relating to any
2 knowledge by the patentee of infringe-
3 ment of the patent or patents at issue
4 before the date on which the com-
5 plaint is filed;

6 (VIII) documents relating to any
7 licensing term or pricing commitment
8 to which the patent or patents may be
9 subject through any agency or stand-
10 ard-setting body; and

11 (IX) documents sufficient to
12 show any marking or other notice pro-
13 vided of the patent or patents at
14 issue; and

15 (ii) does not include computer code,
16 except as specified in paragraph (2)(C)(v).

17 (B) ELECTRONIC COMMUNICATION.—The
18 term “electronic communication” means any
19 form of electronic communication, including
20 email, text message, or instant message.

21 (4) IMPLEMENTATION BY THE DISTRICT
22 COURTS.—Not later than 6 months after the date on
23 which the Judicial Conference has developed the
24 rules and procedures required by this subsection,
25 each United States district court and the United

1 States Court of Federal Claims shall revise the ap-
2 plicable local rules for such court to implement such
3 rules and procedures.

4 (5) AUTHORITY FOR JUDICIAL CONFERENCE TO
5 REVIEW AND MODIFY.—

6 (A) STUDY OF EFFICACY OF RULES AND
7 PROCEDURES.—The Judicial Conference shall
8 study the efficacy of the rules and procedures
9 required by this subsection during the 4-year
10 period beginning on the date on which such
11 rules and procedures by the district courts and
12 the United States Court of Federal Claims are
13 first implemented. The Judicial Conference may
14 modify such rules and procedures following
15 such 4-year period.

16 (B) INITIAL MODIFICATIONS.—Before the
17 expiration of the 4-year period described in sub-
18 paragraph (A), the Judicial Conference may
19 modify the requirements under this sub-
20 section—

21 (i) by designating categories of “core
22 documentary evidence”, in addition to
23 those designated under paragraph (3)(A),
24 as the Judicial Conference determines to
25 be appropriate and necessary; and

1 (ii) as otherwise necessary to prevent
2 a manifest injustice, the imposition of a re-
3 quirement the costs of which clearly out-
4 weigh its benefits, or a result that could
5 not reasonably have been intended by the
6 Congress.

7 (b) JUDICIAL CONFERENCE PATENT CASE MANAGE-
8 MENT.—The Judicial Conference of the United States,
9 using existing resources, shall develop case management
10 procedures to be implemented by the United States dis-
11 trict courts and the United States Court of Federal Claims
12 for any civil action arising under any Act of Congress re-
13 lating to patents, including initial disclosure and early case
14 management conference practices that—

15 (1) will identify any potential dispositive issues
16 of the case; and

17 (2) focus on early summary judgment motions
18 when resolution of issues may lead to expedited dis-
19 position of the case.

20 (c) REVISION OF FORM FOR PATENT INFRINGE-
21 MENT.—

22 (1) ELIMINATION OF FORM.—The Supreme
23 Court, using existing resources, shall eliminate Form
24 18 in the Appendix to the Federal Rules of Civil
25 Procedure (relating to Complaint for Patent In-

1 fringement), effective on the date of the enactment
2 of this Act.

3 (2) REVISED FORM.—The Supreme Court may
4 prescribe a new form or forms setting out model al-
5 legations of patent infringement that, at a minimum,
6 notify accused infringers of the asserted claim or
7 claims, the products or services accused of infringe-
8 ment, and the plaintiff’s theory for how each ac-
9 cused product or service meets each limitation of
10 each asserted claim. The Judicial Conference should
11 exercise the authority under section 2073 of title 28,
12 United States Code, to make recommendations with
13 respect to such new form or forms.

14 (d) PROTECTION OF INTELLECTUAL-PROPERTY LI-
15 CENSES IN BANKRUPTCY.—

16 (1) IN GENERAL.—Section 1522 of title 11,
17 United States Code, is amended by adding at the
18 end the following:

19 “(e) Section 365(n) shall apply to cases under this
20 chapter. If the foreign representative rejects or repudiates
21 a contract under which the debtor is a licensor of intellec-
22 tual property, the licensee under such contract shall be
23 entitled to make the election and exercise the rights de-
24 scribed in section 365(n).”.

25 (2) TRADEMARKS.—

1 (A) IN GENERAL.—Section 101(35A) of
2 title 11, United States Code, is amended—

3 (i) in subparagraph (E), by striking
4 “or”;

5 (ii) in subparagraph (F), by striking
6 “title 17;” and inserting “title 17; or”; and

7 (iii) by adding after subparagraph (F)
8 the following new subparagraph:

9 “(G) a trademark, service mark, or trade
10 name, as those terms are defined in section 45
11 of the Act of July 5, 1946 (commonly referred
12 to as the ‘Trademark Act of 1946’) (15 U.S.C.
13 1127);”.

14 (B) CONFORMING AMENDMENT.—Section
15 365(n)(2) of title 11, United States Code, is
16 amended—

17 (i) in subparagraph (B)—

18 (I) by striking “royalty pay-
19 ments” and inserting “royalty or
20 other payments”; and

21 (II) by striking “and” after the
22 semicolon;

23 (ii) in subparagraph (C), by striking
24 the period at the end of clause (ii) and in-
25 serting “; and”; and

1 (iii) by adding at the end the fol-
2 lowing new subparagraph:

3 “(D) in the case of a trademark, service mark,
4 or trade name, the trustee shall not be relieved of
5 a contractual obligation to monitor and control the
6 quality of a licensed product or service.”.

7 (3) EFFECTIVE DATE.—The amendments made
8 by this subsection shall take effect on the date of the
9 enactment of this Act and shall apply to any case
10 that is pending on, or for which a petition or com-
11 plaint is filed on or after, such date of enactment.

12 **SEC. 3306. SMALL BUSINESS EDUCATION, OUTREACH, AND**
13 **INFORMATION ACCESS.**

14 (a) SMALL BUSINESS EDUCATION AND OUT-
15 REACH.—

16 (1) RESOURCES FOR SMALL BUSINESS.—Using
17 existing resources, the Director shall develop edu-
18 cational resources for small businesses to address
19 concerns arising from patent infringement.

20 (2) SMALL BUSINESS PATENT OUTREACH.—The
21 existing small business patent outreach programs of
22 the Office, and the relevant offices at the Small
23 Business Administration and the Minority Business
24 Development Agency, shall provide education and
25 awareness on abusive patent litigation practices. The

1 Director may give special consideration to the
2 unique needs of small firms owned by disabled vet-
3 erans, service-disabled veterans, women, and minor-
4 ity entrepreneurs in planning and executing the out-
5 reach efforts by the Office.

6 (b) IMPROVING INFORMATION TRANSPARENCY FOR
7 SMALL BUSINESS AND THE UNITED STATES PATENT AND
8 TRADEMARK OFFICE USERS.—

9 (1) WEB SITE.—Using existing resources, the
10 Director shall create a user-friendly section on the
11 official Web site of the Office to notify the public
12 when a patent case is brought in Federal court and,
13 with respect to each patent at issue in such case, the
14 Director shall include—

15 (A) information disclosed under sub-
16 sections (b) and (d) of section 290 of title 35,
17 United States Code, as added by section 3303
18 of this subtitle; and

19 (B) any other information the Director de-
20 termines to be relevant.

21 (2) FORMAT.—In order to promote accessibility
22 for the public, the information described in para-
23 graph (1) shall be searchable by patent number, pat-
24 ent art area, and entity.

1 **SEC. 3307. STUDIES ON PATENT TRANSACTIONS, QUALITY,**
2 **AND EXAMINATION.**

3 (a) STUDY ON SECONDARY MARKET OVERSIGHT FOR
4 PATENT TRANSACTIONS TO PROMOTE TRANSPARENCY
5 AND ETHICAL BUSINESS PRACTICES.—

6 (1) STUDY REQUIRED.—The Director, in con-
7 sultation with the Secretary of Commerce, the Sec-
8 retary of the Treasury, the Chairman of the Securi-
9 ties and Exchange Commission, the heads of other
10 relevant agencies, and interested parties, shall, using
11 existing resources of the Office, conduct a study—

12 (A) to develop legislative recommendations
13 to ensure greater transparency and account-
14 ability in patent transactions occurring on the
15 secondary market;

16 (B) to examine the economic impact that
17 the patent secondary market has on the United
18 States;

19 (C) to examine licensing and other over-
20 sight requirements that may be placed on the
21 patent secondary market, including on the par-
22 ticipants in such markets, to ensure that the
23 market is a level playing field and that brokers
24 in the market have the requisite expertise and
25 adhere to ethical business practices; and

1 (D) to examine the requirements placed on
2 other markets.

3 (2) REPORT ON STUDY.—Not later than 18
4 months after the date of the enactment of this Act,
5 the Director shall submit a report to the Committee
6 on the Judiciary of the House of Representatives
7 and the Committee on the Judiciary of the Senate
8 on the findings and recommendations of the Director
9 from the study required under paragraph (1).

10 (b) STUDY ON PATENTS OWNED BY THE UNITED
11 STATES GOVERNMENT.—

12 (1) STUDY REQUIRED.—The Director, in con-
13 sultation with the heads of relevant agencies and in-
14 terested parties, shall, using existing resources of the
15 Office, conduct a study on patents owned by the
16 United States Government that—

17 (A) examines how such patents are li-
18 censed and sold, and any litigation relating to
19 the licensing or sale of such patents;

20 (B) provides legislative and administrative
21 recommendations on whether there should be
22 restrictions placed on patents acquired from the
23 United States Government;

24 (C) examines whether or not each relevant
25 agency maintains adequate records on the pat-

1 ents owned by such agency, specifically whether
2 such agency addresses licensing, assignment,
3 and Government grants for technology related
4 to such patents; and

5 (D) provides recommendations to ensure
6 that each relevant agency has an adequate
7 point of contact that is responsible for man-
8 aging the patent portfolio of the agency.

9 (2) REPORT ON STUDY.—Not later than 1 year
10 after the date of the enactment of this Act, the Di-
11 rector shall submit to the Committee on the Judici-
12 ary of the House of Representatives and the Com-
13 mittee on the Judiciary of the Senate a report on
14 the findings and recommendations of the Director
15 from the study required under paragraph (1).

16 (c) STUDY ON PATENT QUALITY AND ACCESS TO
17 THE BEST INFORMATION DURING EXAMINATION.—

18 (1) GAO STUDY.—The Comptroller General of
19 the United States shall, using existing resources,
20 conduct a study on patent examination at the Office
21 and the technologies available to improve examina-
22 tion and improve patent quality.

23 (2) CONTENTS OF THE STUDY.—The study re-
24 quired under paragraph (1) shall include the fol-
25 lowing:

1 (A) An examination of patent quality at
2 the Office.

3 (B) An examination of ways to improve
4 patent quality, specifically through technology,
5 that shall include examining best practices at
6 foreign patent offices and the use of existing
7 off-the-shelf technologies to improve patent ex-
8 amination.

9 (C) A description of how patents are clas-
10 sified.

11 (D) An examination of procedures in place
12 to prevent double patenting through filing by
13 applicants in multiple art areas.

14 (E) An examination of the types of off-the-
15 shelf prior art databases and search software
16 used by foreign patent offices and governments,
17 particularly in Europe and Asia, and whether
18 those databases and search tools could be used
19 by the Office to improve patent examination.

20 (F) An examination of any other areas the
21 Comptroller General determines to be relevant.

22 (3) REPORT ON STUDY.—Not later than 1 year
23 after the date of the enactment of this Act, the
24 Comptroller General shall submit to the Committee
25 on the Judiciary of the House of Representatives

1 and the Committee on the Judiciary of the Senate
2 a report on the findings and recommendations from
3 the study required by this subsection, including rec-
4 ommendations for any changes to laws and regula-
5 tions that will improve the examination of patent ap-
6 plications and patent quality.

7 (d) STUDY ON PATENT SMALL CLAIMS COURT.—

8 (1) STUDY REQUIRED.—

9 (A) IN GENERAL.—The Director of the
10 Administrative Office of the United States
11 Courts, in consultation with the Director of the
12 Federal Judicial Center and the United States
13 Patent and Trademark Office, shall, using ex-
14 isting resources, conduct a study to examine the
15 idea of developing a pilot program for patent
16 small claims procedures in certain judicial dis-
17 tricts within the existing patent pilot program
18 mandated by Public Law 111–349.

19 (B) CONTENTS OF STUDY.—The study
20 under subparagraph (A) shall examine—

21 (i) the necessary criteria for using
22 small claims procedures;

23 (ii) the costs that would be incurred
24 for establishing, maintaining, and oper-
25 ating such a pilot program; and

1 (iii) the steps that would be taken to
2 ensure that the procedures used in the
3 pilot program are not misused for abusive
4 patent litigation.

5 (2) REPORT ON STUDY.—Not later than 1 year
6 after the date of the enactment of this Act, the Di-
7 rector of the Administrative Office of the United
8 States Courts shall submit a report to the Com-
9 mittee on the Judiciary of the House of Representa-
10 tives and the Committee on the Judiciary of the
11 Senate on the findings and recommendations of the
12 Director of the Administrative Office from the study
13 required under paragraph (1).

14 (e) STUDY ON DEMAND LETTERS.—

15 (1) STUDY.—The Director, in consultation with
16 the heads of other appropriate agencies, shall, using
17 existing resources, conduct a study of the prevalence
18 of the practice of sending patent demand letters in
19 bad faith and the extent to which that practice may,
20 through fraudulent or deceptive practices, impose a
21 negative impact on the marketplace.

22 (2) REPORT TO CONGRESS.—Not later than 1
23 year after the date of the enactment of this Act, the
24 Director shall submit a report to the Committee on
25 the Judiciary of the House of Representatives and

1 the Committee on the Judiciary of the Senate on the
2 findings and recommendations of the Director from
3 the study required under paragraph (1).

4 (3) PATENT DEMAND LETTER DEFINED.—In
5 this subsection, the term “patent demand letter”
6 means a written communication relating to a patent
7 that states or indicates, directly or indirectly, that
8 the recipient or anyone affiliated with the recipient
9 is or may be infringing the patent.

10 (f) STUDY ON BUSINESS METHOD PATENT QUAL-
11 ITY.—

12 (1) GAO STUDY.—The Comptroller General of
13 the United States shall, using existing resources,
14 conduct a study on the volume and nature of litiga-
15 tion involving business method patents.

16 (2) CONTENTS OF STUDY.—The study required
17 under paragraph (1) shall focus on examining the
18 quality of business method patents asserted in suits
19 alleging patent infringement, and may include an ex-
20 amination of any other areas that the Comptroller
21 General determines to be relevant.

22 (3) REPORT TO CONGRESS.—Not later than 1
23 year after the date of the enactment of this Act, the
24 Comptroller General shall submit to the Committee
25 on the Judiciary of the House of Representatives

1 and the Committee on the Judiciary of the Senate
2 a report on the findings and recommendations from
3 the study required by this subsection, including rec-
4 ommendations for any changes to laws or regula-
5 tions that the Comptroller General considers appro-
6 priate on the basis of the study.

7 (g) STUDY ON IMPACT OF LEGISLATION ON ABILITY
8 OF INDIVIDUALS AND SMALL BUSINESSES TO PROTECT
9 EXCLUSIVE RIGHTS TO INVENTIONS AND DISCOV-
10 ERIES.—

11 (1) STUDY REQUIRED.—The Director, in con-
12 sultation with the Secretary of Commerce, the Direc-
13 tor of the Administrative Office of the United States
14 Courts, the Director of the Federal Judicial Center,
15 the heads of other relevant agencies, and interested
16 parties, shall, using existing resources of the Office,
17 conduct a study to examine the economic impact of
18 sections 3, 4, and 5 of this Act, and any amend-
19 ments made by such sections, on the ability of indi-
20 viduals and small businesses owned by women, vet-
21 erans, and minorities to assert, secure, and vindicate
22 the constitutionally guaranteed exclusive right to in-
23 ventions and discoveries by such individuals and
24 small business.

1 (2) REPORT ON STUDY.—Not later than 2
2 years after the date of the enactment of this Act, the
3 Director shall submit to the Committee on the Judi-
4 ciary of the House of Representatives and the Com-
5 mittee on the Judiciary of the Senate a report on
6 the findings and recommendations of the Director
7 from the study required under paragraph (1).

8 **SEC. 3308. IMPROVEMENTS AND TECHNICAL CORRECTIONS**
9 **TO THE LEAHY-SMITH AMERICA INVENTS**
10 **ACT.**

11 (a) POST-GRANT REVIEW AMENDMENT.—Section
12 325(e)(2) of title 35, United States Code is amended by
13 striking “or reasonably could have raised”.

14 (b) USE OF DISTRICT COURT CLAIM CONSTRUCTION
15 IN POST-GRANT AND INTER PARTES REVIEWS.—

16 (1) INTER PARTES REVIEW.—Section 316(a) of
17 title 35, United States Code, is amended—

18 (A) in paragraph (12), by striking “; and”
19 and inserting a semicolon;

20 (B) in paragraph (13), by striking the pe-
21 riod at the end and inserting “; and”; and

22 (C) by adding at the end the following new
23 paragraph:

24 “(14) providing that for all purposes under this
25 chapter—

1 “(A) each claim of a patent shall be con-
2 strued as such claim would be in a civil action
3 to invalidate a patent under section 282(b), in-
4 cluding construing each claim of the patent in
5 accordance with the ordinary and customary
6 meaning of such claim as understood by one of
7 ordinary skill in the art and the prosecution
8 history pertaining to the patent; and

9 “(B) if a court has previously construed
10 the claim or a claim term in a civil action in
11 which the patent owner was a party, the Office
12 shall consider such claim construction.”.

13 (2) POST-GRANT REVIEW.—Section 326(a) of
14 title 35, United States Code, is amended—

15 (A) in paragraph (11), by striking “; and”
16 and inserting a semicolon;

17 (B) in paragraph (12), by striking the pe-
18 riod at the end and inserting “; and”; and

19 (C) by adding at the end the following new
20 paragraph:

21 “(13) providing that for all purposes under this
22 chapter—

23 “(A) each claim of a patent shall be con-
24 strued as such claim would be in a civil action
25 to invalidate a patent under section 282(b), in-

1 including construing each claim of the patent in
2 accordance with the ordinary and customary
3 meaning of such claim as understood by one of
4 ordinary skill in the art and the prosecution
5 history pertaining to the patent; and

6 “(B) if a court has previously construed
7 the claim or a claim term in a civil action in
8 which the patent owner was a party, the Office
9 shall consider such claim construction.”.

10 (3) TECHNICAL AND CONFORMING AMEND-
11 MENT.—Section 18(a)(1)(A) of the Leahy-Smith
12 America Invents Act (Public Law 112–29; 126 Stat.
13 329; 35 U.S.C. 321 note) is amended by striking
14 “Section 321(c)” and inserting “Sections 321(c) and
15 326(a)(13)”.

16 (4) EFFECTIVE DATE.—The amendments made
17 by this subsection shall take effect upon the expira-
18 tion of the 90-day period beginning on the date of
19 the enactment of this Act, and shall apply to any
20 proceeding under chapter 31 or 32 of title 35,
21 United States Code, as the case may be, for which
22 the petition for review is filed on or after such effec-
23 tive date.

24 (c) CODIFICATION OF THE DOUBLE-PATENTING
25 DOCTRINE FOR FIRST-INVENTOR-TO-FILE PATENTS.—

1 (1) AMENDMENT.—Chapter 10 of title 35,
2 United States Code, is amended by adding at the
3 end the following new section:

4 **“§ 106. Prior art in cases of double patenting**

5 “A claimed invention of a patent issued under section
6 151 (referred to as the ‘first patent’) that is not prior art
7 to a claimed invention of another patent (referred to as
8 the ‘second patent’) shall be considered prior art to the
9 claimed invention of the second patent for the purpose of
10 determining the nonobviousness of the claimed invention
11 of the second patent under section 103 if—

12 “(1) the claimed invention of the first patent
13 was effectively filed under section 102(d) on or be-
14 fore the effective filing date of the claimed invention
15 of the second patent;

16 “(2) either—

17 “(A) the first patent and second patent
18 name the same individual or individuals as the
19 inventor; or

20 “(B) the claimed invention of the first pat-
21 ent would constitute prior art to the claimed in-
22 vention of the second patent under section
23 102(a)(2) if an exception under section
24 102(b)(2) were deemed to be inapplicable and
25 the claimed invention of the first patent was, or

1 were deemed to be, effectively filed under sec-
2 tion 102(d) before the effective filing date of
3 the claimed invention of the second patent; and

4 “(3) the patentee of the second patent has not
5 disclaimed the rights to enforce the second patent
6 independently from, and beyond the statutory term
7 of, the first patent.”.

8 (2) REGULATIONS.—The Director shall promul-
9 gate regulations setting forth the form and content
10 of any disclaimer required for a patent to be issued
11 in compliance with section 106 of title 35, United
12 States Code, as added by paragraph (1). Such regu-
13 lations shall apply to any disclaimer filed after a
14 patent has issued. A disclaimer, when filed, shall be
15 considered for the purpose of determining the valid-
16 ity of the patent under section 106 of title 35,
17 United States Code.

18 (3) CONFORMING AMENDMENT.—The table of
19 sections for chapter 10 of title 35, United States
20 Code, is amended by adding at the end the following
21 new item:

“106. Prior art in cases of double patenting.”.

22 (4) EXCLUSIVE RULE.—A patent subject to sec-
23 tion 106 of title 35, United States Code, as added
24 by paragraph (1), shall not be held invalid on any
25 nonstatutory, double-patenting ground based on a

1 patent described in section 3(n)(1) of the Leahy-
2 Smith America Invents Act (35 U.S.C. 100 note).

3 (5) EFFECTIVE DATE.—The amendments made
4 by this subsection shall take effect upon the expira-
5 tion of the 1-year period beginning on the date of
6 the enactment of this Act and shall apply to a pat-
7 ent or patent application only if both the first and
8 second patents described in section 106 of title 35,
9 United States Code, as added by paragraph (1), are
10 patents or patent applications that are described in
11 section 3(n)(1) of the Leahy-Smith America Invents
12 Act (35 U.S.C. 100 note).

13 (d) PTO PATENT REVIEWS.—

14 (1) CLARIFICATION.—

15 (A) SCOPE OF PRIOR ART.—Section
16 18(a)(1)(C)(i) of the Leahy-Smith America In-
17 vents Act (35 U.S.C. 321 note) is amended by
18 striking “section 102(a)” and inserting “sub-
19 section (a) or (e) of section 102”.

20 (B) EFFECTIVE DATE.—The amendment
21 made by subparagraph (A) shall take effect on
22 the date of the enactment of this Act and shall
23 apply to any proceeding pending on, or filed on
24 or after, such date of enactment.

1 (2) AUTHORITY TO WAIVE FEE.—Subject to
2 available resources, the Director may waive payment
3 of a filing fee for a transitional proceeding described
4 under section 18(a) of the Leahy-Smith America In-
5 vents Act (35 U.S.C. 321 note).

6 (e) CLARIFICATION OF LIMITS ON PATENT TERM
7 ADJUSTMENT.—

8 (1) AMENDMENTS.—Section 154(b)(1)(B) of
9 title 35, United States Code, is amended—

10 (A) in the matter preceding clause (i), by
11 striking “not including—” and inserting “the
12 term of the patent shall be extended 1 day for
13 each day after the end of that 3-year period
14 until the patent is issued, not including—”;

15 (B) in clause (i), by striking “consumed by
16 continued examination of the application re-
17 quested by the applicant” and inserting “con-
18 sumed after continued examination of the appli-
19 cation is requested by the applicant”;

20 (C) in clause (iii), by striking the comma
21 at the end and inserting a period; and

22 (D) by striking the matter following clause
23 (iii).

24 (2) EFFECTIVE DATE.—The amendments made
25 by this subsection shall take effect on the date of the

1 enactment of this Act and apply to any patent appli-
2 cation that is pending on, or filed on or after, such
3 date of enactment.

4 (f) CLARIFICATION OF JURISDICTION.—

5 (1) IN GENERAL.—The Federal interest in pre-
6 venting inconsistent final judicial determinations as
7 to the legal force or effect of the claims in a patent
8 presents a substantial Federal issue that is impor-
9 tant to the Federal system as a whole.

10 (2) APPLICABILITY.—Paragraph (1)—

11 (A) shall apply to all cases filed on or
12 after, or pending on, the date of the enactment
13 of this Act; and

14 (B) shall not apply to a case in which a
15 Federal court has issued a ruling on whether
16 the case or a claim arises under any Act of
17 Congress relating to patents or plant variety
18 protection before the date of the enactment of
19 this Act.

20 (g) PATENT PILOT PROGRAM IN CERTAIN DISTRICT
21 COURTS DURATION.—

22 (1) DURATION.—Section 1(c) of Public Law
23 111–349 (124 Stat. 3674; 28 U.S.C. 137 note) is
24 amended to read as follows:

1 “(c) DURATION.—The program established under
2 subsection (a) shall be maintained using existing re-
3 sources, and shall terminate 20 years after the end of the
4 6-month period described in subsection (b).”.

5 (2) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on the date of the
7 enactment of this Act.

8 (h) TECHNICAL CORRECTIONS.—

9 (1) NOVELTY.—

10 (A) AMENDMENT.—Section 102(b)(1)(A)
11 of title 35, United States Code, is amended by
12 striking “the inventor or joint inventor or by
13 another” and inserting “the inventor or a joint
14 inventor or another”.

15 (B) EFFECTIVE DATE.—The amendment
16 made by subparagraph (A) shall be effective as
17 if included in the amendment made by section
18 3(b)(1) of the Leahy-Smith America Invents
19 Act (Public Law 112–29).

20 (2) INVENTOR’S OATH OR DECLARATION.—

21 (A) AMENDMENT.—The second sentence of
22 section 115(a) of title 35, United States Code,
23 is amended by striking “shall execute” and in-
24 serting “may be required to execute”.

1 (B) EFFECTIVE DATE.—The amendment
2 made by subparagraph (A) shall be effective as
3 if included in the amendment made by section
4 4(a)(1) of the Leahy-Smith America Invents
5 Act (Public Law 112–29).

6 (3) ASSIGNEE FILERS.—

7 (A) BENEFIT OF EARLIER FILING DATE;
8 RIGHT OF PRIORITY.—Section 119(e)(1) of title
9 35, United States Code, is amended, in the first
10 sentence, by striking “by an inventor or inven-
11 tors named” and inserting “that names the in-
12 ventor or a joint inventor”.

13 (B) BENEFIT OF EARLIER FILING DATE IN
14 THE UNITED STATES.—Section 120 of title 35,
15 United States Code, is amended, in the first
16 sentence, by striking “names an inventor or
17 joint inventor” and inserting “names the inven-
18 tor or a joint inventor”.

19 (C) EFFECTIVE DATE.—The amendments
20 made by this paragraph shall take effect on the
21 date of the enactment of this Act and shall
22 apply to any patent application, and any patent
23 issuing from such application, that is filed on or
24 after September 16, 2012.

25 (4) DERIVED PATENTS.—

1 (A) AMENDMENT.—Section 291(b) of title
2 35, United States Code, is amended by striking
3 “or joint inventor” and inserting “or a joint in-
4 ventor”.

5 (B) EFFECTIVE DATE.—The amendment
6 made by subparagraph (A) shall be effective as
7 if included in the amendment made by section
8 3(h)(1) of the Leahy-Smith America Invents
9 Act (Public Law 112–29).

10 (5) SPECIFICATION.—Notwithstanding section
11 4(e) of the Leahy-Smith America Invents Act (Pub-
12 lic Law 112–29; 125 Stat. 297), the amendments
13 made by subsections (c) and (d) of section 4 of such
14 Act shall apply to any proceeding or matter that is
15 pending on, or filed on or after, the date of the en-
16 actment of this Act.

17 (6) TIME LIMIT FOR COMMENCING MISCONDUCT
18 PROCEEDINGS.—

19 (A) AMENDMENT.—The fourth sentence of
20 section 32 of title 35, United States Code, is
21 amended by striking “1 year” and inserting
22 “18 months”.

23 (B) EFFECTIVE DATE.—The amendment
24 made by this paragraph shall take effect on the
25 date of the enactment of this Act and shall

1 apply to any action in which the Office files a
2 complaint on or after such date of enactment.

3 (7) PATENT OWNER RESPONSE.—

4 (A) CONDUCT OF INTER PARTES RE-
5 VIEW.—Paragraph (8) of section 316(a) of title
6 35, United States Code, is amended by striking
7 “the petition under section 313” and inserting
8 “the petition under section 311”.

9 (B) CONDUCT OF POST-GRANT REVIEW.—
10 Paragraph (8) of section 326(a) of title 35,
11 United States Code, is amended by striking
12 “the petition under section 323” and inserting
13 “the petition under section 321”.

14 (C) EFFECTIVE DATE.—The amendments
15 made by this paragraph shall take effect on the
16 date of the enactment of this Act.

17 (8) INTERNATIONAL APPLICATIONS.—

18 (A) AMENDMENTS.—Section 202(b) of the
19 Patent Law Treaties Implementation Act of
20 2012 (Public Law 112–211; 126 Stat. 1536) is
21 amended—

22 (i) by striking paragraph (7); and

23 (ii) by redesignating paragraphs (8)
24 and (9) as paragraphs (7) and (8), respec-
25 tively.

1 (B) EFFECTIVE DATE.—The amendments
2 made by subparagraph (A) shall be effective as
3 if included in title II of the Patent Law Trea-
4 ties Implementation Act of 2012 (Public Law
5 112–21).

6 **SEC. 3309. EFFECTIVE DATE.**

7 Except as otherwise provided in this subtitle, the pro-
8 visions of this subtitle shall take effect on the date of the
9 enactment of this Act, and shall apply to any patent
10 issued, or any action filed, on or after that date.

11 **Subtitle D—Resolving Environ-**
12 **mental and Grid Reliability**
13 **Conflicts**

14 **SEC. 3401. AMENDMENTS TO THE FEDERAL POWER ACT.**

15 (a) COMPLIANCE WITH OR VIOLATION OF ENVIRON-
16 MENTAL LAWS WHILE UNDER EMERGENCY ORDER.—
17 Section 202(c) of the Federal Power Act (16 U.S.C.
18 824a(c)) is amended—

19 (1) by inserting “(1)” after “(c)”; and

20 (2) by adding at the end the following:

21 “(2) With respect to an order issued under this sub-
22 section that may result in a conflict with a requirement
23 of any Federal, State, or local environmental law or regu-
24 lation, the Commission shall ensure that such order re-
25 quires generation, delivery, interchange, or transmission

1 of electric energy only during hours necessary to meet the
2 emergency and serve the public interest, and, to the max-
3 imum extent practicable, is consistent with any applicable
4 Federal, State, or local environmental law or regulation
5 and minimizes any adverse environmental impacts.

6 “(3) To the extent any omission or action taken by
7 a party, that is necessary to comply with an order issued
8 under this subsection, including any omission or action
9 taken to voluntarily comply with such order, results in
10 noncompliance with, or causes such party to not comply
11 with, any Federal, State, or local environmental law or
12 regulation, such omission or action shall not be considered
13 a violation of such environmental law or regulation, or
14 subject such party to any requirement, civil or criminal
15 liability, or a citizen suit under such environmental law
16 or regulation.

17 “(4)(A) An order issued under this subsection that
18 may result in a conflict with a requirement of any Federal,
19 State, or local environmental law or regulation shall expire
20 not later than 90 days after it is issued. The Commission
21 may renew or reissue such order pursuant to paragraphs
22 (1) and (2) for subsequent periods, not to exceed 90 days
23 for each period, as the Commission determines necessary
24 to meet the emergency and serve the public interest.

1 “(B) In renewing or reissuing an order under sub-
2 paragraph (A), the Commission shall consult with the pri-
3 mary Federal agency with expertise in the environmental
4 interest protected by such law or regulation, and shall in-
5 clude in any such renewed or reissued order such condi-
6 tions as such Federal agency determines necessary to min-
7 imize any adverse environmental impacts to the maximum
8 extent practicable. The conditions, if any, submitted by
9 such Federal agency shall be made available to the public.
10 The Commission may exclude such a condition from the
11 renewed or reissued order if it determines that such condi-
12 tion would prevent the order from adequately addressing
13 the emergency necessitating such order and provides in
14 the order, or otherwise makes publicly available, an expla-
15 nation of such determination.”.

16 (b) TEMPORARY CONNECTION OR CONSTRUCTION BY
17 MUNICIPALITIES.—Section 202(d) of the Federal Power
18 Act (16 U.S.C. 824a(d)) is amended by inserting “or mu-
19 nicipality” before “engaged in the transmission or sale of
20 electric energy”.

1 **TITLE IV—PRESERVING ACCESS**
2 **TO ABUNDANT AND AFFORD-**
3 **ABLE SOURCES OF ENERGY**
4 **Subtitle A—Northern Route**
5 **Approval**

6 **SEC. 4101. FINDINGS.**

7 The Congress finds the following:

8 (1) To maintain our Nation's competitive edge
9 and ensure an economy built to last, the United
10 States must have fast, reliable, resilient, and envi-
11 ronmentally sound means of moving energy. In a
12 global economy, we will compete for the world's in-
13 vestments based in significant part on the quality of
14 our infrastructure. Investing in the Nation's infra-
15 structure provides immediate and long-term eco-
16 nomic benefits for local communities and the Nation
17 as a whole.

18 (2) The delivery of oil from Canada, a close ally
19 not only in proximity but in shared values and
20 ideals, to domestic markets is in the national inter-
21 est because of the need to lessen dependence upon
22 insecure foreign sources.

23 (3) The Keystone XL pipeline would provide
24 both short-term and long-term employment opportu-

1 nities and related labor income benefits, such as gov-
2 ernment revenues associated with taxes.

3 (4) The State of Nebraska has thoroughly re-
4 viewed and approved the proposed Keystone XL
5 pipeline reroute, concluding that the concerns of Ne-
6 braskans have had a major influence on the pipeline
7 reroute and that the reroute will have minimal envi-
8 ronmental impacts.

9 (5) The Department of State and other Federal
10 agencies have over a long period of time conducted
11 extensive studies and analysis of the technical as-
12 pects and of the environmental, social, and economic
13 impacts of the proposed Keystone XL pipeline,
14 and—

15 (A) the Department of State assessments
16 found that the Keystone XL pipeline “is not
17 likely to impact the amount of crude oil pro-
18 duced from the oil sands” and that “approval
19 or denial of the proposed project is unlikely to
20 have a substantial impact on the rate of devel-
21 opment in the oil sands”;

22 (B) the Department of State found that
23 incremental life-cycle greenhouse gas emissions
24 associated with the Keystone XL project are es-
25 timated in the range of 0.07 to 0.83 million

1 metric tons of carbon dioxide equivalents, with
2 the upper end of this range representing twelve
3 one-thousandths of one percent of the 6,702
4 million metric tons of carbon dioxide emitted in
5 the United States in 2011; and

6 (C) after extensive evaluation of potential
7 impacts to land and water resources along the
8 Keystone XL pipeline’s 875 mile proposed
9 route, the Department of State found that
10 “The analyses of potential impacts associated
11 with construction and normal operation of the
12 proposed Project suggest that there would be
13 no significant impacts to most resources along
14 the proposed Project route (assuming Keystone
15 complies with all laws and required conditions
16 and measures).”.

17 (6) The transportation of oil via pipeline is the
18 safest and most economically and environmentally
19 effective means of doing so, and—

20 (A) transportation of oil via pipeline has a
21 record of unmatched safety and environmental
22 protection, and the Department of State found
23 that “Spills associated with the proposed
24 Project that enter the environment expected to
25 be rare and relatively small”, and that “there

1 is no evidence of increased corrosion or other
2 pipeline threat due to viscosity” of diluted bitu-
3 men oil that will be transported by the Key-
4 stone XL pipeline; and

5 (B) plans to incorporate 57 project-specific
6 special conditions related to the design, con-
7 struction, and operations of the Keystone XL
8 pipeline led the Department of State to find
9 that the pipeline will have “a degree of safety
10 over any other typically constructed domestic oil
11 pipeline”.

12 (7) The Keystone XL is in much the same posi-
13 tion today as the Alaska Pipeline in 1973 prior to
14 congressional action. Once again, the Federal regu-
15 latory process remains an insurmountable obstacle
16 to a project that is likely to reduce oil imports from
17 insecure foreign sources.

18 **SEC. 4102. KEYSTONE XL PERMIT APPROVAL.**

19 Notwithstanding Executive Order No. 13337 (3
20 U.S.C. 301 note), Executive Order No. 11423 (3 U.S.C.
21 301 note), section 301 of title 3, United States Code, and
22 any other Executive order or provision of law, no Presi-
23 dential permit shall be required for the pipeline described
24 in the application filed on May 4, 2012, by TransCanada
25 Keystone Pipeline, L.P. to the Department of State for

1 the Keystone XL pipeline, as supplemented to include the
2 Nebraska reroute evaluated in the Final Evaluation Re-
3 port issued by the Nebraska Department of Environ-
4 mental Quality in January 2013 and approved by the Ne-
5 braska governor. The final environmental impact state-
6 ment issued by the Secretary of State on August 26, 2011,
7 coupled with the Final Evaluation Report described in the
8 previous sentence, shall be considered to satisfy all re-
9 quirements of the National Environmental Policy Act of
10 1969 (42 U.S.C. 4321 et seq.) and of the National His-
11 toric Preservation Act (16 U.S.C. 470 et seq.).

12 **SEC. 4103. JUDICIAL REVIEW.**

13 (a) **EXCLUSIVE JURISDICTION.**—Except for review by
14 the Supreme Court on writ of certiorari, the United States
15 Court of Appeals for the District of Columbia Circuit shall
16 have original and exclusive jurisdiction to determine—

17 (1) the validity of any final order or action (in-
18 cluding a failure to act) of any Federal agency or of-
19 ficer with respect to issuance of a permit relating to
20 the construction or maintenance of the Keystone XL
21 pipeline, including any final order or action deemed
22 to be taken, made, granted, or issued;

23 (2) the constitutionality of any provision of this
24 subtitle, or any decision or action taken, made,

1 granted, or issued, or deemed to be taken, made,
2 granted, or issued under this subtitle; or

3 (3) the adequacy of any environmental impact
4 statement prepared under the National Environ-
5 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.),
6 or of any analysis under any other Act, with respect
7 to any action taken, made, granted, or issued, or
8 deemed to be taken, made, granted, or issued under
9 this subtitle.

10 (b) DEADLINE FOR FILING CLAIM.—A claim arising
11 under this subtitle may be brought not later than 60 days
12 after the date of the decision or action giving rise to the
13 claim.

14 (c) EXPEDITED CONSIDERATION.—The United
15 States Court of Appeals for the District of Columbia Cir-
16 cuit shall set any action brought under subsection (a) for
17 expedited consideration, taking into account the national
18 interest of enhancing national energy security by providing
19 access to the significant oil reserves in Canada that are
20 needed to meet the demand for oil.

21 **SEC. 4104. AMERICAN BURYING BEETLE.**

22 (a) FINDINGS.—The Congress finds that—

23 (1) environmental reviews performed for the
24 Keystone XL pipeline project satisfy the require-

1 ments of section 7 of the Endangered Species Act of
2 1973 (16 U.S.C. 1536(a)(2)) in its entirety; and

3 (2) for purposes of that Act, the Keystone XL
4 pipeline project will not jeopardize the continued ex-
5 istence of the American burying beetle or destroy or
6 adversely modify American burying beetle critical
7 habitat.

8 (b) BIOLOGICAL OPINION.—The Secretary of the In-
9 terior is deemed to have issued a written statement setting
10 forth the Secretary’s opinion containing such findings
11 under section 7(b)(1)(A) of the Endangered Species Act
12 of 1973 (16 U.S.C. 1536(b)(1)(A)) and any taking of the
13 American burying beetle that is incidental to the construc-
14 tion or operation and maintenance of the Keystone XL
15 pipeline as it may be ultimately defined in its entirety,
16 shall not be considered a prohibited taking of such species
17 under such Act.

18 **SEC. 4105. RIGHT-OF-WAY AND TEMPORARY USE PERMIT.**

19 The Secretary of the Interior is deemed to have
20 granted or issued a grant of right-of-way and temporary
21 use permit under section 28 of the Mineral Leasing Act
22 (30 U.S.C. 185) and the Federal Land Policy and Man-
23 agement Act of 1976 (43 U.S.C. 1701 et seq.), as set forth
24 in the application tendered to the Bureau of Land Man-
25 agement for the Keystone XL pipeline.

1 **SEC. 4106. PERMITS FOR ACTIVITIES IN NAVIGABLE**
2 **WATERS.**

3 (a) **ISSUANCE OF PERMITS.**—The Secretary of the
4 Army, not later than 90 days after receipt of an applica-
5 tion therefor, shall issue all permits under section 404 of
6 the Federal Water Pollution Control Act (33 U.S.C. 1344)
7 and section 10 of the Act of March 3, 1899 (33 U.S.C.
8 403; commonly known as the Rivers and Harbors Appro-
9 priations Act of 1899), necessary for the construction, op-
10 eration, and maintenance of the pipeline described in the
11 May 4, 2012, application referred to in section 4103, as
12 supplemented by the Nebraska reroute. The application
13 shall be based on the administrative record for the pipeline
14 as of the date of enactment of this Act, which shall be
15 considered complete.

16 (b) **WAIVER OF PROCEDURAL REQUIREMENTS.**—The
17 Secretary may waive any procedural requirement of law
18 or regulation that the Secretary considers desirable to
19 waive in order to accomplish the purposes of this section.

20 (c) **ISSUANCE IN ABSENCE OF ACTION BY THE SEC-**
21 **RETARY.**—If the Secretary has not issued a permit de-
22 scribed in subsection (a) on or before the last day of the
23 90-day period referred to in subsection (a), the permit
24 shall be deemed issued under section 404 of the Federal
25 Water Pollution Control Act (33 U.S.C. 1344) or section

1 10 of the Act of March 3, 1899 (33 U.S.C. 403), as appro-
2 priate, on the day following such last day.

3 (d) LIMITATION.—The Administrator of the Environ-
4 mental Protection Agency may not prohibit or restrict an
5 activity or use of an area that is authorized under this
6 section.

7 **SEC. 4107. MIGRATORY BIRD TREATY ACT PERMIT.**

8 The Secretary of the Interior is deemed to have
9 issued a special purpose permit under the Migratory Bird
10 Treaty Act (16 U.S.C. 703 et seq.), as described in the
11 application filed with the United States Fish and Wildlife
12 Service for the Keystone XL pipeline on January 11,
13 2013.

14 **SEC. 4108. OIL SPILL RESPONSE PLAN DISCLOSURE.**

15 (a) IN GENERAL.—Any pipeline owner or operator
16 required under Federal law to develop an oil spill response
17 plan for the Keystone XL pipeline shall make such plan
18 available to the Governor of each State in which such pipe-
19 line operates to assist with emergency response prepared-
20 ness.

21 (b) UPDATES.—A pipeline owner or operator required
22 to make available to a Governor a plan under subsection
23 (a) shall make available to such Governor any update of
24 such plan not later than 7 days after the date on which
25 such update is made.

1 **Subtitle B—Natural Gas Pipeline**
2 **Permitting Reform**

3 **SEC. 4201. REGULATORY APPROVAL OF NATURAL GAS**
4 **PIPELINE PROJECTS.**

5 Section 7 of the Natural Gas Act (15 U.S.C. 717f)
6 is amended by adding at the end the following new sub-
7 section:

8 “(i)(1) The Commission shall approve or deny an ap-
9 plication for a certificate of public convenience and neces-
10 sity for a prefiled project not later than 12 months after
11 receiving a complete application that is ready to be proc-
12 essed, as defined by the Commission by regulation.

13 “(2) The agency responsible for issuing any license,
14 permit, or approval required under Federal law in connec-
15 tion with a prefiled project for which a certificate of public
16 convenience and necessity is sought under this Act shall
17 approve or deny the issuance of the license, permit, or ap-
18 proval not later than 90 days after the Commission issues
19 its final environmental document relating to the project.

20 “(3) The Commission may extend the time period
21 under paragraph (2) by 30 days if an agency demonstrates
22 that it cannot otherwise complete the process required to
23 approve or deny the license, permit, or approval, and
24 therefor will be compelled to deny the license, permit, or
25 approval. In granting an extension under this paragraph,

1 the Commission may offer technical assistance to the
2 agency as necessary to address conditions preventing the
3 completion of the review of the application for the license,
4 permit, or approval.

5 “(4) If an agency described in paragraph (2) does
6 not approve or deny the issuance of the license, permit,
7 or approval within the time period specified under para-
8 graph (2) or (3), as applicable, such license, permit, or
9 approval shall take effect upon the expiration of 30 days
10 after the end of such period. The Commission shall incor-
11 porate into the terms of such license, permit, or approval
12 any conditions proffered by the agency described in para-
13 graph (2) that the Commission does not find are incon-
14 sistent with the final environmental document.

15 “(5) For purposes of this subsection, the term
16 ‘prefiled project’ means a project for the siting, construc-
17 tion, expansion, or operation of a natural gas pipeline with
18 respect to which a prefilings docket number has been as-
19 signed by the Commission pursuant to a prefilings process
20 established by the Commission for the purpose of facili-
21 tating the formal application process for obtaining a cer-
22 tificate of public convenience and necessity.”.

1 **Subtitle C—North American**
2 **Energy Infrastructure**

3 **SEC. 4301. FINDING.**

4 Congress finds that the United States should estab-
5 lish a more uniform, transparent, and modern process for
6 the construction, connection, operation, and maintenance
7 of oil and natural gas pipelines and electric transmission
8 facilities for the import and export of oil and natural gas
9 and the transmission of electricity to and from Canada
10 and Mexico, in pursuit of a more secure and efficient
11 North American energy market.

12 **SEC. 4302. AUTHORIZATION OF CERTAIN ENERGY INFRA-**
13 **STRUCTURE PROJECTS AT THE NATIONAL**
14 **BOUNDARY OF THE UNITED STATES.**

15 (a) AUTHORIZATION.—Except as provided in sub-
16 section (c) and section 4306, no person may construct,
17 connect, operate, or maintain a cross-border segment of
18 an oil pipeline or electric transmission facility for the im-
19 port or export of oil or the transmission of electricity to
20 or from Canada or Mexico without obtaining a certificate
21 of crossing for the construction, connection, operation, or
22 maintenance of the cross-border segment under this sec-
23 tion.

24 (b) CERTIFICATE OF CROSSING.—

1 (1) REQUIREMENT.—Not later than 120 days
2 after final action is taken under the National Envi-
3 ronmental Policy Act of 1969 (42 U.S.C. 4321 et
4 seq.) with respect to a cross-border segment for
5 which a request is received under this section, the
6 relevant official identified under paragraph (2), in
7 consultation with appropriate Federal agencies, shall
8 issue a certificate of crossing for the cross-border
9 segment unless the relevant official finds that the
10 construction, connection, operation, or maintenance
11 of the cross-border segment is not in the public in-
12 terest of the United States.

13 (2) RELEVANT OFFICIAL.—The relevant official
14 referred to in paragraph (1) is—

15 (A) the Secretary of State with respect to
16 oil pipelines; and

17 (B) the Secretary of Energy with respect
18 to electric transmission facilities.

19 (3) ADDITIONAL REQUIREMENT FOR ELECTRIC
20 TRANSMISSION FACILITIES.—In the case of a request
21 for a certificate of crossing for the construction, con-
22 nection, operation, or maintenance of a cross-border
23 segment of an electric transmission facility, the Sec-
24 retary of Energy shall require, as a condition of
25 issuing the certificate of crossing for the request

1 under paragraph (1), that the cross-border segment
2 of the electric transmission facility be constructed,
3 connected, operated, or maintained consistent with
4 all applicable policies and standards of—

5 (A) the Electric Reliability Organization
6 and the applicable regional entity; and

7 (B) any Regional Transmission Organiza-
8 tion or Independent System Operator with
9 operational or functional control over the cross-
10 border segment of the electric transmission fa-
11 cility.

12 (c) EXCLUSIONS.—This section shall not apply to any
13 construction, connection, operation, or maintenance of a
14 cross-border segment of an oil pipeline or electric trans-
15 mission facility for the import or export of oil or the trans-
16 mission of electricity to or from Canada or Mexico—

17 (1) if the cross-border segment is operating for
18 such import, export, or transmission as of the date
19 of enactment of this Act;

20 (2) if a permit described in section 4305 for
21 such construction, connection, operation, or mainte-
22 nance has been issued;

23 (3) if a certificate of crossing for such construc-
24 tion, connection, operation, or maintenance has pre-
25 viously been issued under this section; or

1 (4) if an application for a permit described in
2 section 4305 for such construction, connection, oper-
3 ation, or maintenance is pending on the date of en-
4 actment of this Act, until the earlier of—

5 (A) the date on which such application is
6 denied; or

7 (B) July 1, 2016.

8 (d) EFFECT OF OTHER LAWS.—

9 (1) APPLICATION TO PROJECTS.—Nothing in
10 this section or section 4306 shall affect the applica-
11 tion of any other Federal statute to a project for
12 which a certificate of crossing for the construction,
13 connection, operation, or maintenance of a cross-bor-
14 der segment is sought under this section.

15 (2) NATURAL GAS ACT.—Nothing in this sec-
16 tion or section 4306 shall affect the requirement to
17 obtain approval or authorization under sections 3
18 and 7 of the Natural Gas Act for the siting, con-
19 struction, or operation of any facility to import or
20 export natural gas.

21 (3) ENERGY POLICY AND CONSERVATION
22 ACT.—Nothing in this section or section 4306 shall
23 affect the authority of the President under section
24 103(a) of the Energy Policy and Conservation Act.

1 **SEC. 4303. IMPORTATION OR EXPORTATION OF NATURAL**
2 **GAS TO CANADA AND MEXICO.**

3 Section 3(c) of the Natural Gas Act (15 U.S.C.
4 717b(c)) is amended by adding at the end the following:
5 “No order is required under subsection (a) to authorize
6 the export or import of any natural gas to or from Canada
7 or Mexico.”.

8 **SEC. 4304. TRANSMISSION OF ELECTRIC ENERGY TO CAN-**
9 **ADA AND MEXICO.**

10 (a) **REPEAL OF REQUIREMENT TO SECURE**
11 **ORDER.**—Section 202(e) of the Federal Power Act (16
12 U.S.C. 824a(e)) is repealed.

13 (b) **CONFORMING AMENDMENTS.**—

14 (1) **STATE REGULATIONS.**—Section 202(f) of
15 the Federal Power Act (16 U.S.C. 824a(f)) is
16 amended by striking “insofar as such State regula-
17 tion does not conflict with the exercise of the Com-
18 mission’s powers under or relating to subsection
19 202(e)”.

20 (2) **SEASONAL DIVERSITY ELECTRICITY EX-**
21 **CHANGE.**—Section 602(b) of the Public Utility Reg-
22 ulatory Policies Act of 1978 (16 U.S.C. 824a–4(b))
23 is amended by striking “the Commission has con-
24 ducted hearings and made the findings required
25 under section 202(e) of the Federal Power Act” and
26 all that follows through the period at the end and

1 inserting “the Secretary has conducted hearings and
2 finds that the proposed transmission facilities would
3 not impair the sufficiency of electric supply within
4 the United States or would not impede or tend to
5 impede the coordination in the public interest of fa-
6 cilities subject to the jurisdiction of the Secretary.”.

7 **SEC. 4305. NO PRESIDENTIAL PERMIT REQUIRED.**

8 No Presidential permit (or similar permit) required
9 under Executive Order No. 13337 (3 U.S.C. 301 note),
10 Executive Order No. 11423 (3 U.S.C. 301 note), section
11 301 of title 3, United States Code, Executive Order No.
12 12038, Executive Order No. 10485, or any other Execu-
13 tive order shall be necessary for the construction, connec-
14 tion, operation, or maintenance of an oil or natural gas
15 pipeline or electric transmission facility, or any cross-bor-
16 der segment thereof.

17 **SEC. 4306. MODIFICATIONS TO EXISTING PROJECTS.**

18 No certificate of crossing under section 4302, or per-
19 mit described in section 4305, shall be required for a
20 modification to the construction, connection, operation, or
21 maintenance of an oil or natural gas pipeline or electric
22 transmission facility—

23 (1) that is operating for the import or export
24 of oil or natural gas or the transmission of elec-

1 tricity to or from Canada or Mexico as of the date
2 of enactment of the Act;

3 (2) for which a permit described in section
4 4305 for such construction, connection, operation, or
5 maintenance has been issued; or

6 (3) for which a certificate of crossing for the
7 cross-border segment of the pipeline or facility has
8 previously been issued under section 4302.

9 **SEC. 4307. EFFECTIVE DATE; RULEMAKING DEADLINES.**

10 (a) **EFFECTIVE DATE.**—Sections 4302 through 4306,
11 and the amendments made by such sections, shall take ef-
12 fect on July 1, 2015.

13 (b) **RULEMAKING DEADLINES.**—Each relevant offi-
14 cial described in section 4302(b)(2) shall—

15 (1) not later than 180 days after the date of
16 enactment of this Act, publish in the Federal Reg-
17 ister notice of a proposed rulemaking to carry out
18 the applicable requirements of section 4302; and

19 (2) not later than 1 year after the date of en-
20 actment of this Act, publish in the Federal Register
21 a final rule to carry out the applicable requirements
22 of section 4302.

23 **SEC. 4308. DEFINITIONS.**

24 In this subtitle—

1 (1) the term “cross-border segment” means the
2 portion of an oil or natural gas pipeline or electric
3 transmission facility that is located at the national
4 boundary of the United States with either Canada or
5 Mexico;

6 (2) the term “modification” includes a reversal
7 of flow direction, change in ownership, volume ex-
8 pansion, downstream or upstream interconnection,
9 or adjustment to maintain flow (such as a reduction
10 or increase in the number of pump or compressor
11 stations);

12 (3) the term “natural gas” has the meaning
13 given that term in section 2 of the Natural Gas Act
14 (15 U.S.C. 717a);

15 (4) the term “oil” means petroleum or a petro-
16 leum product;

17 (5) the terms “Electric Reliability Organiza-
18 tion” and “regional entity” have the meanings given
19 those terms in section 215 of the Federal Power Act
20 (16 U.S.C. 824o); and

21 (6) the terms “Independent System Operator”
22 and “Regional Transmission Organization” have the
23 meanings given those terms in section 3 of the Fed-
24 eral Power Act (16 U.S.C. 796).

1 **Subtitle D—Protecting States’**
2 **Rights To Promote American**
3 **Energy Security Act**

4 **CHAPTER 1—STATE AUTHORITY FOR**
5 **HYDRAULIC FRACTURING REGULATION**

6 **SEC. 4411. STATE AUTHORITY FOR HYDRAULIC FRAC-**
7 **TURING REGULATION.**

8 The Mineral Leasing Act (30 U.S.C. 181 et seq.) is
9 amended by redesignating section 44 as section 45, and
10 by inserting after section 43 the following:

11 **“SEC. 44. STATE AUTHORITY FOR HYDRAULIC FRACTURING**
12 **REGULATION.**

13 “(a) IN GENERAL.—The Department of the Interior
14 shall not enforce any Federal regulation, guidance, or per-
15 mit requirement regarding hydraulic fracturing, or any
16 component of that process, relating to oil, gas, or geo-
17 thermal production activities on or under any land in any
18 State that has regulations, guidance, or permit require-
19 ments for that activity.

20 “(b) STATE AUTHORITY.—The Department of the
21 Interior shall recognize and defer to State regulations,
22 permitting, and guidance, for all activities related to hy-
23 draulic fracturing, or any component of that process, re-
24 lating to oil, gas, or geothermal production activities on
25 Federal land.

1 “(c) TRANSPARENCY OF STATE REGULATIONS.—

2 “(1) IN GENERAL.—Each State shall submit to
3 the Bureau of Land Management a copy of its regu-
4 lations that apply to hydraulic fracturing operations
5 on Federal land.

6 “(2) AVAILABILITY.—The Secretary of the In-
7 terior shall make available to the public State regu-
8 lations submitted under this subsection.

9 “(d) TRANSPARENCY OF STATE DISCLOSURE RE-
10 QUIREMENTS.—

11 “(1) IN GENERAL.—Each State shall submit to
12 the Bureau of Land Management a copy of any reg-
13 ulations of the State that require disclosure of
14 chemicals used in hydraulic fracturing operations on
15 Federal land.

16 “(2) AVAILABILITY.—The Secretary of the In-
17 terior shall make available to the public State regu-
18 lations submitted under this subsection.

19 “(e) HYDRAULIC FRACTURING DEFINED.—In this
20 section the term ‘hydraulic fracturing’ means the process
21 by which fracturing fluids (or a fracturing fluid system)
22 are pumped into an underground geologic formation at a
23 calculated, predetermined rate and pressure to generate
24 fractures or cracks in the target formation and thereby

1 increase the permeability of the rock near the wellbore and
2 improve production of natural gas or oil.”.

3 **SEC. 4412. GOVERNMENT ACCOUNTABILITY OFFICE STUDY.**

4 (a) STUDY.—The Comptroller General of the United
5 States shall conduct a study examining the economic bene-
6 fits of domestic shale oil and gas production resulting from
7 the process of hydraulic fracturing. This study will include
8 identification of—

9 (1) State and Federal revenue generated as a
10 result of shale gas production;

11 (2) jobs created both directly and indirectly as
12 a result of shale oil and gas production; and

13 (3) an estimate of potential energy prices with-
14 out domestic shale oil and gas production.

15 (b) REPORT.—The Comptroller General shall submit
16 a report on the findings of such study to the Committee
17 on Natural Resources of the House of Representatives
18 within 30 days after completion of the study.

19 **SEC. 4413. TRIBAL AUTHORITY ON TRUST LAND.**

20 The Department of the Interior shall not enforce any
21 Federal regulation, guidance, or permit requirement re-
22 garding the process of hydraulic fracturing (as that term
23 is defined in section 44 of the Mineral Leasing Act, as
24 amended by section 4411 of this Act), or any component
25 of that process, relating to oil, gas, or geothermal produc-

1 tion activities on any land held in trust or restricted status
2 for the benefit of Indians except with the express consent
3 of the beneficiary on whose behalf such land is held in
4 trust or restricted status.

5 **CHAPTER 2—EPA HYDRAULIC**
6 **FRACTURING RESEARCH**

7 **SEC. 4421. EPA HYDRAULIC FRACTURING RESEARCH.**

8 In conducting its study of the potential impacts of
9 hydraulic fracturing on drinking water resources, with re-
10 spect to which a request for information was issued under
11 Federal Register Vol. 77, No. 218, the Administrator of
12 the Environmental Protection Agency shall adhere to the
13 following requirements:

14 (1) PEER REVIEW AND INFORMATION QUAL-
15 ITY.—Prior to issuance and dissemination of any
16 final report or any interim report summarizing the
17 Environmental Protection Agency’s research on the
18 relationship between hydraulic fracturing and drink-
19 ing water, the Administrator shall—

20 (A) consider such reports to be Highly In-
21 fluential Scientific Assessments and require
22 peer review of such reports in accordance with
23 guidelines governing such assessments, as de-
24 scribed in—

1 (i) the Environmental Protection
2 Agency's Peer Review Handbook 3rd Edi-
3 tion;

4 (ii) the Environmental Protection
5 Agency's Scientific Integrity Policy, as in
6 effect on the date of enactment of this Act;
7 and

8 (iii) the Office of Management and
9 Budget's Peer Review Bulletin, as in effect
10 on the date of enactment of this Act; and

11 (B) require such reports to meet the stand-
12 ards and procedures for the dissemination of in-
13 fluential scientific, financial, or statistical infor-
14 mation set forth in the Environmental Protec-
15 tion Agency's Guidelines for Ensuring and
16 Maximizing the Quality, Objectivity, Utility,
17 and Integrity of Information Disseminated by
18 the Environmental Protection Agency, devel-
19 oped in response to guidelines issued by the Of-
20 fice of Management and Budget under section
21 515(a) of the Treasury and General Govern-
22 ment Appropriations Act for Fiscal Year 2001
23 (Public Law 106-554).

24 (2) PROBABILITY, UNCERTAINTY, AND CON-
25 SEQUENCE.—In order to maximize the quality and

1 utility of information developed through the study,
2 the Administrator shall ensure that identification of
3 the possible impacts of hydraulic fracturing on
4 drinking water resources included in such reports be
5 accompanied by objective estimates of the prob-
6 ability, uncertainty, and consequence of each identi-
7 fied impact, taking into account the risk manage-
8 ment practices of States and industry. Estimates or
9 descriptions of probability, uncertainty, and con-
10 sequence shall be as quantitative as possible given
11 the validity, accuracy, precision, and other quality
12 attributes of the underlying data and analyses, but
13 no more quantitative than the data and analyses can
14 support.

15 (3) RELEASE OF FINAL REPORT.—The final re-
16 port shall be publicly released by September 30,
17 2016.

18 **CHAPTER 3—MISCELLANEOUS**

19 **PROVISIONS**

20 **SEC. 4431. REVIEW OF STATE ACTIVITIES.**

21 The Secretary of the Interior shall annually review
22 and report to Congress on all State activities relating to
23 hydraulic fracturing.

1 **Subtitle E—Offshore Energy and**
2 **Jobs**
3 **CHAPTER 1—OUTER CONTINENTAL SHELF**
4 **LEASING PROGRAM REFORMS**
5 **SEC. 4511. OUTER CONTINENTAL SHELF LEASING PRO-**
6 **GRAM REFORMS.**

7 Section 18(a) of the Outer Continental Shelf Lands
8 Act (43 U.S.C. 1344(a)) is amended by adding at the end
9 the following:

10 “(5)(A) In each oil and gas leasing program
11 under this section, the Secretary shall make avail-
12 able for leasing and conduct lease sales including at
13 least 50 percent of the available unleased acreage
14 within each outer Continental Shelf planning area
15 considered to have the largest undiscovered, tech-
16 nically recoverable oil and gas resources (on a total
17 btu basis) based upon the most recent national geo-
18 logic assessment of the outer Continental Shelf, with
19 an emphasis on offering the most geologically pro-
20 spective parts of the planning area.

21 “(B) The Secretary shall include in each pro-
22 posed oil and gas leasing program under this section
23 any State subdivision of an outer Continental Shelf
24 planning area that the Governor of the State that
25 represents that subdivision requests be made avail-

1 able for leasing. The Secretary may not remove such
2 a subdivision from the program until publication of
3 the final program, and shall include and consider all
4 such subdivisions in any environmental review con-
5 ducted and statement prepared for such program
6 under section 102(2) of the National Environmental
7 Policy Act of 1969 (42 U.S.C. 4332(2)).

8 “(C) In this paragraph the term ‘available un-
9 leased acreage’ means that portion of the outer Con-
10 tinental Shelf that is not under lease at the time of
11 a proposed lease sale, and that has not otherwise
12 been made unavailable for leasing by law.

13 “(6)(A) In the 5-year oil and gas leasing pro-
14 gram, the Secretary shall make available for leasing
15 any outer Continental Shelf planning areas that—

16 “(i) are estimated to contain more than
17 2,500,000,000 barrels of oil; or

18 “(ii) are estimated to contain more than
19 7,500,000,000,000 cubic feet of natural gas.

20 “(B) To determine the planning areas described
21 in subparagraph (A), the Secretary shall use the
22 document entitled ‘Minerals Management Service
23 Assessment of Undiscovered Technically Recoverable
24 Oil and Gas Resources of the Nation’s Outer Conti-
25 nental Shelf, 2006’.”.

1 **SEC. 4512. DOMESTIC OIL AND NATURAL GAS PRODUCTION**

2 **GOAL.**

3 Section 18(b) of the Outer Continental Shelf Lands
4 Act (43 U.S.C. 1344(b)) is amended to read as follows:

5 “(b) DOMESTIC OIL AND NATURAL GAS PRODUC-
6 TION GOAL.—

7 “(1) IN GENERAL.—In developing a 5-year oil
8 and gas leasing program, and subject to paragraph
9 (2), the Secretary shall determine a domestic stra-
10 tegic production goal for the development of oil and
11 natural gas as a result of that program. Such goal
12 shall be—

13 “(A) the best estimate of the possible in-
14 crease in domestic production of oil and natural
15 gas from the outer Continental Shelf;

16 “(B) focused on meeting domestic demand
17 for oil and natural gas and reducing the de-
18 pendence of the United States on foreign en-
19 ergy; and

20 “(C) focused on the production increases
21 achieved by the leasing program at the end of
22 the 15-year period beginning on the effective
23 date of the program.

24 “(2) PROGRAM GOAL.—For purposes of the 5-
25 year oil and gas leasing program, the production

1 goal referred to in paragraph (1) shall be an in-
2 crease by 2032 of—

3 “(A) no less than 3,000,000 barrels in the
4 amount of oil produced per day; and

5 “(B) no less than 10,000,000,000 cubic
6 feet in the amount of natural gas produced per
7 day.

8 “(3) REPORTING.—The Secretary shall report
9 annually, beginning at the end of the 5-year period
10 for which the program applies, to the Committee on
11 Natural Resources of the House of Representatives
12 and the Committee on Energy and Natural Re-
13 sources of the Senate on the progress of the pro-
14 gram in meeting the production goal. The Secretary
15 shall identify in the report projections for production
16 and any problems with leasing, permitting, or pro-
17 duction that will prevent meeting the goal.”.

18 **SEC. 4513. DEVELOPMENT AND SUBMITTAL OF NEW 5-YEAR**

19 **OIL AND GAS LEASING PROGRAM.**

20 (a) IN GENERAL.—The Secretary of the Interior
21 shall—

22 (1) by not later than July 15, 2015, publish
23 and submit to Congress a new proposed oil and gas
24 leasing program under section 18 of the Outer Con-
25 tinental Shelf Lands Act (43 U.S.C. 1344) for the

1 5-year period beginning on such date and ending
2 July 15, 2021; and

3 (2) by not later than July 15, 2016, approve a
4 final oil and gas leasing program under such section
5 for such period.

6 (b) CONSIDERATION OF ALL AREAS.—In preparing
7 such program the Secretary shall include consideration of
8 areas of the Continental Shelf off the coasts of all States
9 (as such term is defined in section 2 of that Act, as
10 amended by this Act), that are subject to leasing under
11 this Act.

12 (c) TECHNICAL CORRECTION.—Section 18(d)(3) of
13 the Outer Continental Shelf Lands Act (43 U.S.C.
14 1344(d)(3)) is amended by striking “or after eighteen
15 months following the date of enactment of this section,
16 whichever first occurs,”.

17 **SEC. 4514. RULE OF CONSTRUCTION.**

18 Nothing in this subtitle shall be construed to author-
19 ize the issuance of a lease under the Outer Continental
20 Shelf Lands Act (43 U.S.C. 1331 et seq.) to any person
21 designated for the imposition of sanctions pursuant to—

22 (1) the Iran Sanctions Act of 1996 (50 U.S.C.
23 1701 note), the Comprehensive Iran Sanctions, Ac-
24 countability and Divestiture Act of 2010 (22 U.S.C.
25 8501 et seq.), the Iran Threat Reduction and Syria

1 Human Rights Act of 2012 (22 U.S.C. 8701 et
2 seq.), section 1245 of the National Defense Author-
3 ization Act for Fiscal Year 2012 (22 U.S.C. 8513a),
4 or the Iran Freedom and Counter-Proliferation Act
5 of 2012 (22 U.S.C. 8801 et seq.);

6 (2) Executive Order No. 13622 (July 30,
7 2012), Executive Order No. 13628 (October 9,
8 2012), or Executive Order No. 13645 (June 3,
9 2013);

10 (3) Executive Order No. 13224 (September 23,
11 2001) or Executive Order No. 13338 (May 11,
12 2004); or

13 (4) the Syria Accountability and Lebanese Sov-
14 ereignty Restoration Act of 2003 (22 U.S.C. 2151
15 note).

16 **CHAPTER 2—DIRECTING THE PRESIDENT**
17 **TO CONDUCT NEW OCS SALES IN VIR-**
18 **GINIA, SOUTH CAROLINA, AND CALI-**
19 **FORNIA**

20 **SEC. 4521. REQUIREMENT TO CONDUCT PROPOSED OIL**
21 **AND GAS LEASE SALE 220 ON THE OUTER**
22 **CONTINENTAL SHELF OFFSHORE VIRGINIA.**

23 (a) IN GENERAL.—Notwithstanding the exclusion of
24 Lease Sale 220 in the Final Outer Continental Shelf Oil
25 & Gas Leasing Program 2012–2017, the Secretary of the

1 Interior shall conduct offshore oil and gas Lease Sale 220
2 under section 8 of the Outer Continental Shelf Lands Act
3 (43 U.S.C. 1337) as soon as practicable, but not later
4 than one year after the date of enactment of this Act.

5 (b) REQUIREMENT TO MAKE REPLACEMENT LEASE
6 BLOCKS AVAILABLE.—For each lease block in a proposed
7 lease sale under this section for which the Secretary of
8 Defense, in consultation with the Secretary of the Interior,
9 under the Memorandum of Agreement referred to in sec-
10 tion 4525(b), issues a statement proposing deferral from
11 a lease offering due to defense-related activities that are
12 irreconcilable with mineral exploration and development,
13 the Secretary of the Interior, in consultation with the Sec-
14 retary of Defense, shall make available in the same lease
15 sale one other lease block in the Virginia lease sale plan-
16 ning area that is acceptable for oil and gas exploration
17 and production in order to mitigate conflict.

18 (c) BALANCING MILITARY AND ENERGY PRODUC-
19 TION GOALS.—In recognition that the Outer Continental
20 Shelf oil and gas leasing program and the domestic energy
21 resources produced therefrom are integral to national se-
22 curity, the Secretary of the Interior and the Secretary of
23 Defense shall work jointly in implementing this section in
24 order to ensure achievement of the following common
25 goals:

1 (1) Preserving the ability of the Armed Forces
2 of the United States to maintain an optimum state
3 of readiness through their continued use of the
4 Outer Continental Shelf.

5 (2) Allowing effective exploration, development,
6 and production of our Nation’s oil, gas, and renew-
7 able energy resources.

8 (d) DEFINITIONS.—In this section:

9 (1) LEASE SALE 220.—The term “Lease Sale
10 220” means such lease sale referred to in the Re-
11 quest for Comments on the Draft Proposed 5-Year
12 Outer Continental Shelf (OCS) Oil and Gas Leasing
13 Program for 2010–2015 and Notice of Intent To
14 Prepare an Environmental Impact Statement (EIS)
15 for the Proposed 5-Year Program published January
16 21, 2009 (74 Fed. Reg. 3631).

17 (2) VIRGINIA LEASE SALE PLANNING AREA.—
18 The term “Virginia lease sale planning area” means
19 the area of the outer Continental Shelf (as that term
20 is defined in the Outer Continental Shelf Lands Act
21 (33 U.S.C. 1331 et seq.)) that is bounded by—

22 (A) a northern boundary consisting of a
23 straight line extending from the northernmost
24 point of Virginia’s seaward boundary to the
25 point on the seaward boundary of the United

1 States exclusive economic zone located at 37 de-
2 grees 17 minutes 1 second North latitude, 71
3 degrees 5 minutes 16 seconds West longitude;
4 and

5 (B) a southern boundary consisting of a
6 straight line extending from the southernmost
7 point of Virginia’s seaward boundary to the
8 point on the seaward boundary of the United
9 States exclusive economic zone located at 36 de-
10 grees 31 minutes 58 seconds North latitude, 71
11 degrees 30 minutes 1 second West longitude.

12 **SEC. 4522. SOUTH CAROLINA LEASE SALE.**

13 Notwithstanding inclusion of the South Atlantic
14 Outer Continental Shelf Planning Area in the Final Outer
15 Continental Shelf Oil & Gas Leasing Program 2012–2017,
16 the Secretary of the Interior shall conduct a lease sale not
17 later than 2 years after the date of the enactment of this
18 Act for areas off the coast of South Carolina determined
19 by the Secretary to have the most geologically promising
20 hydrocarbon resources and constituting not less than 25
21 percent of the leasable area within the South Carolina off-
22 shore administrative boundaries depicted in the notice en-
23 titled “Federal Outer Continental Shelf (OCS) Adminis-
24 trative Boundaries Extending from the Submerged Lands
25 Act Boundary seaward to the Limit of the United States

1 Outer Continental Shelf”, published January 3, 2006 (71
2 Fed. Reg. 127).

3 **SEC. 4523. SOUTHERN CALIFORNIA EXISTING INFRASTRUC-**
4 **TURE LEASE SALE.**

5 (a) IN GENERAL.—The Secretary of the Interior shall
6 offer for sale leases of tracts in the Santa Maria and
7 Santa Barbara/Ventura Basins of the Southern California
8 OCS Planning Area as soon as practicable, but not later
9 than December 31, 2015.

10 (b) USE OF EXISTING STRUCTURES OR ONSHORE-
11 BASED DRILLING.—The Secretary of the Interior shall in-
12 clude in leases offered for sale under this lease sale such
13 terms and conditions as are necessary to require that de-
14 velopment and production may occur only from offshore
15 infrastructure in existence on the date of the enactment
16 of this Act or from onshore-based, extended-reach drilling.

17 **SEC. 4524. ENVIRONMENTAL IMPACT STATEMENT RE-**
18 **QUIREMENT.**

19 (a) IN GENERAL.—For the purposes of this subtitle,
20 the Secretary of the Interior shall prepare a multisale en-
21 vironmental impact statement under section 102 of the
22 National Environmental Policy Act of 1969 (42 U.S.C.
23 4332) for all lease sales required under this chapter.

1 (b) ACTIONS TO BE CONSIDERED.—Notwithstanding
2 section 102 of the National Environmental Policy Act of
3 1969 (42 U.S.C. 4332), in such statement—

4 (1) the Secretary is not required to identify
5 nonleasing alternative courses of action or to analyze
6 the environmental effects of such alternative courses
7 of action; and

8 (2) the Secretary shall only—

9 (A) identify a preferred action for leasing
10 and not more than one alternative leasing pro-
11 posal; and

12 (B) analyze the environmental effects and
13 potential mitigation measures for such pre-
14 ferred action and such alternative leasing pro-
15 posal.

16 **SEC. 4525. NATIONAL DEFENSE.**

17 (a) NATIONAL DEFENSE AREAS.—This subtitle does
18 not affect the existing authority of the Secretary of De-
19 fense, with the approval of the President, to designate na-
20 tional defense areas on the Outer Continental Shelf pursu-
21 ant to section 12(d) of the Outer Continental Shelf Lands
22 Act (43 U.S.C. 1341(d)).

23 (b) PROHIBITION ON CONFLICTS WITH MILITARY
24 OPERATIONS.—No person may engage in any exploration,
25 development, or production of oil or natural gas on the

1 Outer Continental Shelf under a lease issued under this
2 subtitle that would conflict with any military operation,
3 as determined in accordance with the Memorandum of
4 Agreement between the Department of Defense and the
5 Department of the Interior on Mutual Concerns on the
6 Outer Continental Shelf signed July 20, 1983, and any
7 revision or replacement for that agreement that is agreed
8 to by the Secretary of Defense and the Secretary of the
9 Interior after that date but before the date of issuance
10 of the lease under which such exploration, development,
11 or production is conducted.

12 **SEC. 4526. EASTERN GULF OF MEXICO NOT INCLUDED.**

13 Nothing in this subtitle affects restrictions on oil and
14 gas leasing under the Gulf of Mexico Energy Security Act
15 of 2006 (title I of division C of Public Law 109–432; 43
16 U.S.C. 1331 note).

17 **CHAPTER 3—EQUITABLE SHARING OF**
18 **OUTER CONTINENTAL SHELF REVENUES**

19 **SEC. 4531. DISPOSITION OF OUTER CONTINENTAL SHELF**
20 **REVENUES TO COASTAL STATES.**

21 (a) IN GENERAL.—Section 9 of the Outer Conti-
22 nental Shelf Lands Act (43 U.S.C. 1338) is amended—
23 (1) in the existing text—
24 (A) in the first sentence, by striking “All
25 rentals,” and inserting the following:

1 “(c) DISPOSITION OF REVENUE UNDER OLD
2 LEASES.—All rentals,”; and

3 (B) in subsection (c) (as designated by the
4 amendment made by subparagraph (A) of this
5 paragraph), by striking “for the period from
6 June 5, 1950, to date, and thereafter” and in-
7 serting “in the period beginning June 5, 1950,
8 and ending on the date of enactment of the
9 American Renaissance in Manufacturing Act”;

10 (2) by adding after subsection (c) (as so des-
11 ignated) the following:

12 “(d) DEFINITIONS.—In this section:

13 “(1) COASTAL STATE.—The term ‘coastal
14 State’ includes a territory of the United States.

15 “(2) NEW LEASING REVENUES.—The term ‘new
16 leasing revenues’—

17 “(A) means amounts received by the
18 United States as bonuses, rents, and royalties
19 under leases for oil and gas, wind, tidal, or
20 other energy exploration, development, and pro-
21 duction on new areas of the outer Continental
22 Shelf that are authorized to be made available
23 for leasing as a result of enactment of the
24 American Renaissance in Manufacturing Act
25 and leasing under that Act; and

1 “(B) does not include amounts received by
2 the United States under any lease of an area lo-
3 cated in the boundaries of the Central Gulf of
4 Mexico and Western Gulf of Mexico Outer Con-
5 tinental Shelf Planning Areas on the date of en-
6 actment of the American Renaissance in Manu-
7 facturing Act, including a lease issued before,
8 on, or after such date of enactment.”; and

9 (3) by inserting before subsection (c) (as so
10 designated) the following:

11 “(a) PAYMENT OF NEW LEASING REVENUES TO
12 COASTAL STATES.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graph (2), of the amount of new leasing revenues re-
15 ceived by the United States each fiscal year, 37.5
16 percent shall be allocated and paid in accordance
17 with subsection (b) to coastal States that are af-
18 fected States with respect to the leases under which
19 those revenues are received by the United States.

20 “(2) PHASE-IN.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), paragraph (1) shall be ap-
23 plied—

24 “(i) with respect to new leasing reve-
25 nues under leases awarded under the first

1 leasing program under section 18(a) that
2 takes effect after the date of enactment of
3 the American Renaissance in Manufac-
4 turing Act, by substituting ‘12.5 percent’
5 for ‘37.5 percent’; and

6 “(ii) with respect to new leasing reve-
7 nues under leases awarded under the sec-
8 ond leasing program under section 18(a)
9 that takes effect after the date of enact-
10 ment of the American Renaissance in Man-
11 ufacturing Act, by substituting ‘25 per-
12 cent’ for ‘37.5 percent’.

13 “(B) EXEMPTED LEASE SALES.—This
14 paragraph shall not apply with respect to any
15 lease issued under chapter 2 of subtitle E of
16 title IV of the American Renaissance in Manu-
17 facturing Act.

18 “(b) ALLOCATION OF PAYMENTS.—

19 “(1) IN GENERAL.—The amount of new leasing
20 revenues received by the United States with respect
21 to a leased tract that are required to be paid to
22 coastal States in accordance with this subsection
23 each fiscal year shall be allocated among and paid
24 to coastal States that are within 200 miles of the
25 leased tract, in amounts that are inversely propor-

1 tional to the respective distances between the point
2 on the coastline of each such State that is closest to
3 the geographic center of the lease tract, as deter-
4 mined by the Secretary.

5 “(2) MINIMUM AND MAXIMUM ALLOCATION.—

6 The amount allocated to a coastal State under para-
7 graph (1) each fiscal year with respect to a leased
8 tract shall be—

9 “(A) in the case of a coastal State that is
10 the nearest State to the geographic center of
11 the leased tract, not less than 25 percent of the
12 total amounts allocated with respect to the
13 leased tract;

14 “(B) in the case of any other coastal State,
15 not less than 10 percent, and not more than 15
16 percent, of the total amounts allocated with re-
17 spect to the leased tract; and

18 “(C) in the case of a coastal State that is
19 the only coastal State within 200 miles of a
20 leased tract, 100 percent of the total amounts
21 allocated with respect to the leased tract.

22 “(3) ADMINISTRATION.—Amounts allocated to
23 a coastal State under this subsection—

24 “(A) shall be available to the coastal State
25 without further appropriation;

1 “(B) shall remain available until expended;

2 “(C) shall be in addition to any other
3 amounts available to the coastal State under
4 this Act; and

5 “(D) shall be distributed in the fiscal year
6 following receipt.

7 “(4) USE OF FUNDS.—

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), a coastal State may use
10 funds allocated and paid to it under this sub-
11 section for any purpose as determined by the
12 laws of that State.

13 “(B) RESTRICTION ON USE FOR MATCH-
14 ING.—Funds allocated and paid to a coastal
15 State under this subsection may not be used as
16 matching funds for any other Federal pro-
17 gram.”.

18 (b) LIMITATION ON APPLICATION.—This section and
19 the amendment made by this section shall not affect the
20 application of section 105 of the Gulf of Mexico Energy
21 Security Act of 2006 (title I of division C of Public Law
22 109–432; (43 U.S.C. 1331 note)), as in effect before the
23 enactment of this Act, with respect to revenues received
24 by the United States under oil and gas leases issued for
25 tracts located in the Western and Central Gulf of Mexico

1 Outer Continental Shelf Planning Areas, including such
2 leases issued on or after the date of the enactment of this
3 Act.

4 **CHAPTER 4—REORGANIZATION OF MIN-**
5 **ERALS MANAGEMENT AGENCIES OF**
6 **THE DEPARTMENT OF THE INTERIOR**

7 **SEC. 4541. ESTABLISHMENT OF UNDER SECRETARY FOR**
8 **ENERGY, LANDS, AND MINERALS AND ASSIST-**
9 **ANT SECRETARY OF OCEAN ENERGY AND**
10 **SAFETY.**

11 There shall be in the Department of the Interior—

12 (1) an Under Secretary for Energy, Lands, and
13 Minerals, who shall—

14 (A) be appointed by the President, by and
15 with the advise and consent of the Senate;

16 (B) report to the Secretary of the Interior
17 or, if directed by the Secretary, to the Deputy
18 Secretary of the Interior;

19 (C) be paid at the rate payable for level III
20 of the Executive Schedule; and

21 (D) be responsible for—

22 (i) the safe and responsible develop-
23 ment of our energy and mineral resources
24 on Federal lands in appropriate accordance
25 with United States energy demands; and

1 (ii) ensuring multiple-use missions of
2 the Department of the Interior that pro-
3 mote the safe and sustained development
4 of energy and minerals resources on public
5 lands (as that term is defined in the Fed-
6 eral Land Policy and Management Act of
7 1976 (43 U.S.C. 1701 et seq.));

8 (2) an Assistant Secretary of Ocean Energy
9 and Safety, who shall—

10 (A) be appointed by the President, by and
11 with the advise and consent of the Senate;

12 (B) report to the Under Secretary for En-
13 ergy, Lands, and Minerals;

14 (C) be paid at the rate payable for level IV
15 of the Executive Schedule; and

16 (D) be responsible for ensuring safe and
17 efficient development of energy and minerals on
18 the Outer Continental Shelf of the United
19 States; and

20 (3) an Assistant Secretary of Land and Min-
21 erals Management, who shall—

22 (A) be appointed by the President, by and
23 with the advise and consent of the Senate;

24 (B) report to the Under Secretary for En-
25 ergy, Lands, and Minerals;

1 (C) be paid at the rate payable for level IV
2 of the Executive Schedule; and

3 (D) be responsible for ensuring safe and
4 efficient development of energy and minerals on
5 public lands and other Federal onshore lands
6 under the jurisdiction of the Department of the
7 Interior, including implementation of the Min-
8 eral Leasing Act (30 U.S.C. 181 et seq.) and
9 the Surface Mining Control and Reclamation
10 Act (30 U.S.C. 1201 et seq.) and administra-
11 tion of the Office of Surface Mining.

12 **SEC. 4542. BUREAU OF OCEAN ENERGY.**

13 (a) ESTABLISHMENT.—There is established in the
14 Department of the Interior a Bureau of Ocean Energy (re-
15 ferred to in this section as the “Bureau”), which shall—

16 (1) be headed by a Director of Ocean Energy
17 (referred to in this section as the “Director”); and

18 (2) be administered under the direction of the
19 Assistant Secretary of Ocean Energy and Safety.

20 (b) DIRECTOR.—

21 (1) APPOINTMENT.—The Director shall be ap-
22 pointed by the Secretary of the Interior.

23 (2) COMPENSATION.—The Director shall be
24 compensated at the rate provided for level V of the

1 Executive Schedule under section 5316 of title 5,
2 United States Code.

3 (c) DUTIES.—

4 (1) IN GENERAL.—The Secretary of the Inte-
5 rior shall carry out through the Bureau all func-
6 tions, powers, and duties vested in the Secretary re-
7 lating to the administration of a comprehensive pro-
8 gram of offshore mineral and renewable energy re-
9 sources management.

10 (2) SPECIFIC AUTHORITIES.—The Director
11 shall promulgate and implement regulations—

12 (A) for the proper issuance of leases for
13 the exploration, development, and production of
14 nonrenewable and renewable energy and min-
15 eral resources on the Outer Continental Shelf;

16 (B) relating to resource identification, ac-
17 cess, evaluation, and utilization;

18 (C) for development of leasing plans, lease
19 sales, and issuance of leases for such resources;
20 and

21 (D) regarding issuance of environmental
22 impact statements related to leasing and post
23 leasing activities including exploration, develop-
24 ment, and production, and the use of third

1 party contracting for necessary environmental
2 analysis for the development of such resources.

3 (3) LIMITATION.—The Secretary shall not carry
4 out through the Bureau any function, power, or duty
5 that is—

6 (A) required by section 4543 to be carried
7 out through the Ocean Energy Safety Service;
8 or

9 (B) required by section 4544 to be carried
10 out through the Office of Natural Resources
11 Revenue.

12 (d) RESPONSIBILITIES OF LAND MANAGEMENT
13 AGENCIES.—Nothing in this section shall affect the au-
14 thorities of the Bureau of Land Management under the
15 Federal Land Policy and Management Act of 1976 (43
16 U.S.C. 1701 et seq.) or of the Forest Service under the
17 National Forest Management Act of 1976 (Public Law
18 94–588).

19 **SEC. 4543. OCEAN ENERGY SAFETY SERVICE.**

20 (a) ESTABLISHMENT.—There is established in the
21 Department of the Interior an Ocean Energy Safety Serv-
22 ice (referred to in this section as the “Service”), which
23 shall—

24 (1) be headed by a Director of Energy Safety
25 (referred to in this section as the “Director”); and

1 (2) be administered under the direction of the
2 Assistant Secretary of Ocean Energy and Safety.

3 (b) DIRECTOR.—

4 (1) APPOINTMENT.—The Director shall be ap-
5 pointed by the Secretary of the Interior.

6 (2) COMPENSATION.—The Director shall be
7 compensated at the rate provided for level V of the
8 Executive Schedule under section 5316 of title 5,
9 United States Code.

10 (c) DUTIES.—

11 (1) IN GENERAL.—The Secretary of the Inte-
12 rior shall carry out through the Service all functions,
13 powers, and duties vested in the Secretary relating
14 to the administration of safety and environmental
15 enforcement activities related to offshore mineral
16 and renewable energy resources on the Outer Conti-
17 nental Shelf pursuant to the Outer Continental Shelf
18 Lands Act (43 U.S.C. 1331 et seq.) including the
19 authority to develop, promulgate, and enforce regu-
20 lations to ensure the safe and sound exploration, de-
21 velopment, and production of mineral and renewable
22 energy resources on the Outer Continental Shelf in
23 a timely fashion.

24 (2) SPECIFIC AUTHORITIES.—The Director
25 shall be responsible for all safety activities related to

1 exploration and development of renewable and min-
2 eral resources on the Outer Continental Shelf, in-
3 cluding—

4 (A) exploration, development, production,
5 and ongoing inspections of infrastructure;

6 (B) the suspending or prohibiting, on a
7 temporary basis, any operation or activity, in-
8 cluding production under leases held on the
9 Outer Continental Shelf, in accordance with
10 section 5(a)(1) of the Outer Continental Shelf
11 Lands Act (43 U.S.C. 1334(a)(1));

12 (C) cancelling any lease, permit, or right-
13 of-way on the Outer Continental Shelf, in ac-
14 cordance with section 5(a)(2) of the Outer Con-
15 tinental Shelf Lands Act (43 U.S.C.
16 1334(a)(2));

17 (D) compelling compliance with applicable
18 Federal laws and regulations relating to worker
19 safety and other matters;

20 (E) requiring comprehensive safety and en-
21 vironmental management programs for persons
22 engaged in activities connected with the explo-
23 ration, development, and production of mineral
24 or renewable energy resources;

1 (F) developing and implementing regula-
2 tions for Federal employees to carry out any in-
3 spection or investigation to ascertain compli-
4 ance with applicable regulations, including
5 health, safety, or environmental regulations;

6 (G) implementing the Offshore Technology
7 Research and Risk Assessment Program under
8 section 21 of the Outer Continental Shelf
9 Lands Act (43 U.S.C. 1347);

10 (H) summoning witnesses and directing
11 the production of evidence;

12 (I) levying fines and penalties and disquali-
13 fying operators;

14 (J) carrying out any safety, response, and
15 removal preparedness functions; and

16 (K) the processing of permits, exploration
17 plans, development plans.

18 (d) EMPLOYEES.—

19 (1) IN GENERAL.—The Secretary shall ensure
20 that the inspection force of the Bureau consists of
21 qualified, trained employees who meet qualification
22 requirements and adhere to the highest professional
23 and ethical standards.

24 (2) QUALIFICATIONS.—The qualification re-
25 quirements referred to in paragraph (1)—

1 (A) shall be determined by the Secretary,
2 subject to subparagraph (B); and

3 (B) shall include—

4 (i) 3 years of practical experience in
5 oil and gas exploration, development, or
6 production; or

7 (ii) a degree in an appropriate field of
8 engineering from an accredited institution
9 of higher learning.

10 (3) ASSIGNMENT.—In assigning oil and gas in-
11 spectors to the inspection and investigation of indi-
12 vidual operations, the Secretary shall give due con-
13 sideration to the extent possible to their previous ex-
14 perience in the particular type of oil and gas oper-
15 ation in which such inspections are to be made.

16 (4) BACKGROUND CHECKS.—The Director shall
17 require that an individual to be hired as an inspec-
18 tion officer undergo an employment investigation
19 (including a criminal history record check).

20 (5) LANGUAGE REQUIREMENTS.—Individuals
21 hired as inspectors must be able to read, speak, and
22 write English well enough to—

23 (A) carry out written and oral instructions
24 regarding the proper performance of inspection
25 duties; and

1 (B) write inspection reports and state-
2 ments and log entries in the English language.

3 (6) VETERANS PREFERENCE.—The Director
4 shall provide a preference for the hiring of an indi-
5 vidual as a inspection officer if the individual is a
6 member or former member of the Armed Forces and
7 is entitled, under statute, to retired, retirement, or
8 retainer pay on account of service as a member of
9 the Armed Forces.

10 (7) ANNUAL PROFICIENCY REVIEW.—

11 (A) ANNUAL PROFICIENCY REVIEW.—The
12 Director shall provide that an annual evaluation
13 of each individual assigned inspection duties is
14 conducted and documented.

15 (B) CONTINUATION OF EMPLOYMENT.—An
16 individual employed as an inspector may not
17 continue to be employed in that capacity unless
18 the evaluation demonstrates that the indi-
19 vidual—

20 (i) continues to meet all qualifications
21 and standards;

22 (ii) has a satisfactory record of per-
23 formance and attention to duty based on
24 the standards and requirements in the in-
25 spection program; and

1 (iii) demonstrates the current knowl-
2 edge and skills necessary to courteously,
3 vigilantly, and effectively perform inspec-
4 tion functions.

5 (8) LIMITATION ON RIGHT TO STRIKE.—Any
6 individual that conducts permitting or inspections
7 under this section may not participate in a strike, or
8 assert the right to strike.

9 (9) PERSONNEL AUTHORITY.—Notwithstanding
10 any other provision of law, the Director may employ,
11 appoint, discipline and terminate for cause, and fix
12 the compensation, terms, and conditions of employ-
13 ment of Federal service for individuals as the em-
14 ployees of the Service in order to restore and main-
15 tain the trust of the people of the United States in
16 the accountability of the management of our Na-
17 tion’s energy safety program.

18 (10) TRAINING ACADEMY.—

19 (A) IN GENERAL.—The Secretary shall es-
20 tablish and maintain a National Offshore En-
21 ergy Safety Academy (referred to in this para-
22 graph as the “Academy”) as an agency of the
23 Ocean Energy Safety Service.

1 (B) FUNCTIONS OF ACADEMY.—The Sec-
2 retary, through the Academy, shall be respon-
3 sible for—

4 (i) the initial and continued training
5 of both newly hired and experienced off-
6 shore oil and gas inspectors in all aspects
7 of health, safety, environmental, and oper-
8 ational inspections;

9 (ii) the training of technical support
10 personnel of the Bureau;

11 (iii) any other training programs for
12 offshore oil and gas inspectors, Bureau
13 personnel, Department personnel, or other
14 persons as the Secretary shall designate;
15 and

16 (iv) certification of the successful
17 completion of training programs for newly
18 hired and experienced offshore oil and gas
19 inspectors.

20 (C) COOPERATIVE AGREEMENTS.—

21 (i) IN GENERAL.—In performing func-
22 tions under this paragraph, and subject to
23 clause (ii), the Secretary may enter into
24 cooperative educational and training agree-
25 ments with educational institutions, related

1 Federal academies, other Federal agencies,
2 State governments, safety training firms,
3 and oil and gas operators and related in-
4 dustries.

5 (ii) TRAINING REQUIREMENT.—Such
6 training shall be conducted by the Acad-
7 emy in accordance with curriculum needs
8 and assignment of instructional personnel
9 established by the Secretary.

10 (11) USE OF DEPARTMENT PERSONNEL.—In
11 performing functions under this subsection, the Sec-
12 retary shall use, to the extent practicable, the facili-
13 ties and personnel of the Department of the Interior.
14 The Secretary may appoint or assign to the Acad-
15 emy such officers and employees as the Secretary
16 considers necessary for the performance of the du-
17 ties and functions of the Academy.

18 (12) ADDITIONAL TRAINING PROGRAMS.—

19 (A) IN GENERAL.—The Secretary shall
20 work with appropriate educational institutions,
21 operators, and representatives of oil and gas
22 workers to develop and maintain adequate pro-
23 grams with educational institutions and oil and
24 gas operators that are designed—

1 (i) to enable persons to qualify for po-
2 sitions in the administration of this sub-
3 title; and

4 (ii) to provide for the continuing edu-
5 cation of inspectors or other appropriate
6 Department of the Interior personnel.

7 (B) FINANCIAL AND TECHNICAL ASSIST-
8 ANCE.—The Secretary may provide financial
9 and technical assistance to educational institu-
10 tions in carrying out this paragraph.

11 (e) LIMITATION.—The Secretary shall not carry out
12 through the Service any function, power, or duty that is—

13 (1) required by section 4542 to be carried out
14 through the Bureau of Ocean Energy; or

15 (2) required by section 4544 to be carried out
16 through the Office of Natural Resources Revenue.

17 **SEC. 4544. OFFICE OF NATURAL RESOURCES REVENUE.**

18 (a) ESTABLISHMENT.—There is established in the
19 Department of the Interior an Office of Natural Resources
20 Revenue (referred to in this section as the “Office”) to
21 be headed by a Director of Natural Resources Revenue
22 (referred to in this section as the “Director”).

23 (b) APPOINTMENT AND COMPENSATION.—

24 (1) IN GENERAL.—The Director shall be ap-
25 pointed by the Secretary of the Interior.

1 (2) COMPENSATION.—The Director shall be
2 compensated at the rate provided for level V of the
3 Executive Schedule under section 5316 of title 5,
4 United States Code.

5 (c) DUTIES.—

6 (1) IN GENERAL.—The Secretary of the Inte-
7 rior shall carry out, through the Office, all functions,
8 powers, and duties vested in the Secretary and relat-
9 ing to the administration of offshore royalty and rev-
10 enue management functions.

11 (2) SPECIFIC AUTHORITIES.—The Secretary
12 shall carry out, through the Office, all functions,
13 powers, and duties previously assigned to the Min-
14 erals Management Service (including the authority
15 to develop, promulgate, and enforce regulations) re-
16 garding offshore royalty and revenue collection; roy-
17 alty and revenue distribution; auditing and compli-
18 ance; investigation and enforcement of royalty and
19 revenue regulations; and asset management for on-
20 shore and offshore activities.

21 (d) LIMITATION.—The Secretary shall not carry out
22 through the Office any function, power, or duty that is—

23 (1) required by section 4542 to be carried out
24 through the Bureau of Ocean Energy; or

1 (2) required by section 4543 to be carried out
2 through the Ocean Energy Safety Service.

3 **SEC. 4545. ETHICS AND DRUG TESTING.**

4 (a) CERTIFICATION.—The Secretary of the Interior
5 shall certify annually that all Department of the Interior
6 officers and employees having regular, direct contact with
7 lessees, contractors, concessionaires, and other businesses
8 interested before the Government as a function of their
9 official duties, or conducting investigations, issuing per-
10 mits, or responsible for oversight of energy programs, are
11 in full compliance with all Federal employee ethics laws
12 and regulations under the Ethics in Government Act of
13 1978 (5 U.S.C. App.) and part 2635 of title 5, Code of
14 Federal Regulations, and all guidance issued under sub-
15 section (c).

16 (b) DRUG TESTING.—The Secretary shall conduct a
17 random drug testing program of all Department of the
18 Interior personnel referred to in subsection (a).

19 (c) GUIDANCE.—Not later than 90 days after the
20 date of enactment of this Act, the Secretary shall issue
21 supplementary ethics and drug testing guidance for the
22 employees for which certification is required under sub-
23 section (a). The Secretary shall update the supplementary
24 ethics guidance not less than once every 3 years there-
25 after.

1 **SEC. 4546. ABOLISHMENT OF MINERALS MANAGEMENT**

2 **SERVICE.**

3 (a) **ABOLISHMENT.**—The Minerals Management
4 Service is abolished.

5 (b) **COMPLETED ADMINISTRATIVE ACTIONS.**—

6 (1) **IN GENERAL.**—Completed administrative
7 actions of the Minerals Management Service shall
8 not be affected by the enactment of this Act, but
9 shall continue in effect according to their terms until
10 amended, modified, superseded, terminated, set
11 aside, or revoked in accordance with law by an offi-
12 cer of the United States or a court of competent ju-
13 risdiction, or by operation of law.

14 (2) **COMPLETED ADMINISTRATIVE ACTION DE-**
15 **FINED.**—For purposes of paragraph (1), the term
16 “completed administrative action” includes orders,
17 determinations, memoranda of understanding,
18 memoranda of agreements, rules, regulations, per-
19 sonnel actions, permits, agreements, grants, con-
20 tracts, certificates, licenses, registrations, and privi-
21 leges.

22 (c) **PENDING PROCEEDINGS.**—Subject to the author-
23 ity of the Secretary of the Interior and the officers of the
24 Department of the Interior under this subtitle—

25 (1) pending proceedings in the Minerals Man-
26 agement Service, including notices of proposed rule-

1 making, and applications for licenses, permits, cer-
2 tificates, grants, and financial assistance, shall con-
3 tinue, notwithstanding the enactment of this subtitle
4 or the vesting of functions of the Service in another
5 agency, unless discontinued or modified under the
6 same terms and conditions and to the same extent
7 that such discontinuance or modification could have
8 occurred if this subtitle had not been enacted; and

9 (2) orders issued in such proceedings, and ap-
10 peals therefrom, and payments made pursuant to
11 such orders, shall issue in the same manner and on
12 the same terms as if this subtitle had not been en-
13 acted, and any such orders shall continue in effect
14 until amended, modified, superseded, terminated, set
15 aside, or revoked by an officer of the United States
16 or a court of competent jurisdiction, or by operation
17 of law.

18 (d) PENDING CIVIL ACTIONS.—Subject to the au-
19 thority of the Secretary of the Interior or any officer of
20 the Department of the Interior under this subtitle, pend-
21 ing civil actions shall continue notwithstanding the enact-
22 ment of this subtitle, and in such civil actions, proceedings
23 shall be had, appeals taken, and judgments rendered and
24 enforced in the same manner and with the same effect
25 as if such enactment had not occurred.

1 (e) REFERENCES.—References relating to the Min-
2 erals Management Service in statutes, Executive orders,
3 rules, regulations, directives, or delegations of authority
4 that precede the effective date of this Act are deemed to
5 refer, as appropriate, to the Department, to its officers,
6 employees, or agents, or to its corresponding organiza-
7 tional units or functions. Statutory reporting requirements
8 that applied in relation to the Minerals Management Serv-
9 ice immediately before the effective date of this subtitle
10 shall continue to apply.

11 **SEC. 4547. CONFORMING AMENDMENTS TO EXECUTIVE**
12 **SCHEDULE PAY RATES.**

13 (a) UNDER SECRETARY FOR ENERGY, LANDS, AND
14 MINERALS.—Section 5314 of title 5, United States Code,
15 is amended by inserting after the item relating to “Under
16 Secretaries of the Treasury (3).” the following:

17 “Under Secretary for Energy, Lands, and Min-
18 erals, Department of the Interior.”.

19 (b) ASSISTANT SECRETARIES.—Section 5315 of title
20 5, United States Code, is amended by striking “Assistant
21 Secretaries of the Interior (6).” and inserting the fol-
22 lowing:

23 “Assistant Secretaries, Department of the Inte-
24 rior (7).”.

1 (c) DIRECTORS.—Section 5316 of title 5, United
2 States Code, is amended by striking “Director, Bureau of
3 Mines, Department of the Interior.” and inserting the fol-
4 lowing new items:

5 “Director, Bureau of Ocean Energy, Depart-
6 ment of the Interior.

7 “Director, Ocean Energy Safety Service, De-
8 partment of the Interior.

9 “Director, Office of Natural Resources Rev-
10 enue, Department of the Interior.”.

11 **SEC. 4548. OUTER CONTINENTAL SHELF ENERGY SAFETY**

12 **ADVISORY BOARD.**

13 (a) ESTABLISHMENT.—The Secretary of the Interior
14 shall establish, under the Federal Advisory Committee
15 Act, an Outer Continental Shelf Energy Safety Advisory
16 Board (referred to in this section as the “Board”)—

17 (1) to provide the Secretary and the Directors
18 established by this Act with independent scientific
19 and technical advice on safe, responsible, and timely
20 mineral and renewable energy exploration, develop-
21 ment, and production activities; and

22 (2) to review operations of the National Off-
23 shore Energy Health and Safety Academy estab-
24 lished under section 4543(d), including submitting
25 to the Secretary recommendations of curriculum to

1 ensure training scientific and technical advance-
2 ments.

3 (b) MEMBERSHIP.—

4 (1) SIZE.—The Board shall consist of not more
5 than 11 members, who—

6 (A) shall be appointed by the Secretary
7 based on their expertise in oil and gas drilling,
8 well design, operations, well containment and
9 oil spill response; and

10 (B) must have significant scientific, engi-
11 neering, management, and other credentials and
12 a history of working in the field related to safe
13 energy exploration, development, and produc-
14 tion activities.

15 (2) CONSULTATION AND NOMINATIONS.—The
16 Secretary shall consult with the National Academy
17 of Sciences and the National Academy of Engineer-
18 ing to identify potential candidates for the Board
19 and shall take nominations from the public.

20 (3) TERM.—The Secretary shall appoint Board
21 members to staggered terms of not more than 4
22 years, and shall not appoint a member for more
23 than 2 consecutive terms.

1 (4) BALANCE.—In appointing members to the
2 Board, the Secretary shall ensure a balanced rep-
3 resentation of industry and research interests.

4 (c) CHAIR.—The Secretary shall appoint the Chair
5 for the Board from among its members.

6 (d) MEETINGS.—The Board shall meet not less than
7 3 times per year and shall host, at least once per year,
8 a public forum to review and assess the overall energy
9 safety performance of Outer Continental Shelf mineral
10 and renewable energy resource activities.

11 (e) OFFSHORE DRILLING SAFETY ASSESSMENTS
12 AND RECOMMENDATIONS.—As part of its duties under
13 this section, the Board shall, by not later than 180 days
14 after the date of enactment of this section and every 5
15 years thereafter, submit to the Secretary a report that—

16 (1) assesses offshore oil and gas well control
17 technologies, practices, voluntary standards, and
18 regulations in the United States and elsewhere; and

19 (2) as appropriate, recommends modifications
20 to the regulations issued under this subtitle to en-
21 sure adequate protection of safety and the environ-
22 ment, including recommendations on how to reduce
23 regulations and administrative actions that are du-
24 plicative or unnecessary.

1 (f) REPORTS.—Reports of the Board shall be sub-
2 mitted by the Board to the Committee on Natural Re-
3 sources of the House of Representatives and the Com-
4 mittee on Energy and Natural Resources of the Senate
5 and made available to the public in electronically acces-
6 sible form.

7 (g) TRAVEL EXPENSES.—Members of the Board,
8 other than full-time employees of the Federal Government,
9 while attending a meeting of the Board or while otherwise
10 serving at the request of the Secretary or the Director
11 while serving away from their homes or regular places of
12 business, may be allowed travel expenses, including per
13 diem in lieu of subsistence, as authorized by section 5703
14 of title 5, United States Code, for individuals in the Gov-
15 ernment serving without pay.

16 **SEC. 4549. OUTER CONTINENTAL SHELF INSPECTION FEES.**

17 Section 22 of the Outer Continental Shelf Lands Act
18 (43 U.S.C. 1348) is amended by adding at the end of the
19 section the following:

20 “(g) INSPECTION FEES.—

21 “(1) ESTABLISHMENT.—The Secretary of the
22 Interior shall collect from the operators of facilities
23 subject to inspection under subsection (c) non-re-
24 fundable fees for such inspections—

1 “(A) at an aggregate level equal to the
2 amount necessary to offset the annual expenses
3 of inspections of outer Continental Shelf facili-
4 ties (including mobile offshore drilling units) by
5 the Department of the Interior; and

6 “(B) using a schedule that reflects the dif-
7 ferences in complexity among the classes of fa-
8 cilities to be inspected.

9 “(2) OCEAN ENERGY SAFETY FUND.—There is
10 established in the Treasury a fund, to be known as
11 the ‘Ocean Energy Enforcement Fund’ (referred to
12 in this subsection as the ‘Fund’), into which shall be
13 deposited all amounts collected as fees under para-
14 graph (1) and which shall be available as provided
15 under paragraph (3).

16 “(3) AVAILABILITY OF FEES.—

17 “(A) IN GENERAL.—Notwithstanding sec-
18 tion 3302 of title 31, United States Code, all
19 amounts deposited in the Fund—

20 “(i) shall be credited as offsetting col-
21 lections;

22 “(ii) shall be available for expenditure
23 for purposes of carrying out inspections of
24 outer Continental Shelf facilities (including
25 mobile offshore drilling units) and the ad-

1 ministration of the inspection program
2 under this section;

3 “(iii) shall be available only to the ex-
4 tent provided for in advance in an appro-
5 priations Act; and

6 “(iv) shall remain available until ex-
7 pended.

8 “(B) USE FOR FIELD OFFICES.—Not less
9 than 75 percent of amounts in the Fund may
10 be appropriated for use only for the respective
11 Department of the Interior field offices where
12 the amounts were originally assessed as fees.

13 “(4) INITIAL FEES.—Fees shall be established
14 under this subsection for the fiscal year in which
15 this subsection takes effect and the subsequent 10
16 years, and shall not be raised without advise and
17 consent of the Congress, except as determined by the
18 Secretary to be appropriate as an adjustment equal
19 to the percentage by which the Consumer Price
20 Index for the month of June of the calendar year
21 preceding the adjustment exceeds the Consumer
22 Price Index for the month of June of the calendar
23 year in which the claim was determined or last ad-
24 justed.

1 “(5) ANNUAL FEES.—Annual fees shall be col-
2 lected under this subsection for facilities that are
3 above the waterline, excluding drilling rigs, and are
4 in place at the start of the fiscal year. Fees for fiscal
5 year 2014 shall be—

6 “(A) \$10,500 for facilities with no wells,
7 but with processing equipment or gathering
8 lines;

9 “(B) \$17,000 for facilities with 1 to 10
10 wells, with any combination of active or inactive
11 wells; and

12 “(C) \$31,500 for facilities with more than
13 10 wells, with any combination of active or in-
14 active wells.

15 “(6) FEES FOR DRILLING RIGS.—Fees for drill-
16 ing rigs shall be assessed under this subsection for
17 all inspections completed in fiscal years 2014
18 through 2023. Fees for fiscal year 2014 shall be—

19 “(A) \$30,500 per inspection for rigs oper-
20 ating in water depths of 1,000 feet or more;
21 and

22 “(B) \$16,700 per inspection for rigs oper-
23 ating in water depths of less than 1,000 feet.

24 “(7) BILLING.—The Secretary shall bill des-
25 ignated operators under paragraph (5) within 60

1 days after the date of the inspection, with payment
2 required within 30 days of billing. The Secretary
3 shall bill designated operators under paragraph (6)
4 within 30 days of the end of the month in which the
5 inspection occurred, with payment required within
6 30 days after billing.

7 “(8) SUNSET.—No fee may be collected under
8 this subsection for any fiscal year after fiscal year
9 2023.

10 “(9) ANNUAL REPORTS.—

11 “(A) IN GENERAL.—Not later than 60
12 days after the end of each fiscal year beginning
13 with fiscal year 2015, the Secretary shall sub-
14 mit to the Committee on Energy and Natural
15 Resources of the Senate and the Committee on
16 Natural Resources of the House of Representa-
17 tives a report on the operation of the Fund dur-
18 ing the fiscal year.

19 “(B) CONTENTS.—Each report shall in-
20 clude, for the fiscal year covered by the report,
21 the following:

22 “(i) A statement of the amounts de-
23 posited into the Fund.

24 “(ii) A description of the expenditures
25 made from the Fund for the fiscal year, in-

1 cluding the purpose of the expenditures
2 and the additional hiring of personnel.

3 “(iii) A statement of the balance re-
4 maining in the Fund at the end of the fis-
5 cal year.

6 “(iv) An accounting of pace of permit
7 approvals.

8 “(v) If fee increases are proposed
9 after the initial 10-year period referred to
10 in paragraph (5), a proper accounting of
11 the potential adverse economic impacts
12 such fee increases will have on offshore
13 economic activity and overall production,
14 conducted by the Secretary.

15 “(vi) Recommendations to increase
16 the efficacy and efficiency of offshore in-
17 spections.

18 “(vii) Any corrective actions levied
19 upon offshore inspectors as a result of any
20 form of misconduct.”.

21 **SEC. 4550. PROHIBITION ON ACTION BASED ON NATIONAL**
22 **OCEAN POLICY DEVELOPED UNDER EXECU-**
23 **TIVE ORDER NO. 13547.**

24 (a) PROHIBITION.—The Bureau of Ocean Energy
25 and the Ocean Energy Safety Service may not develop,

1 propose, finalize, administer, or implement, any limitation
2 on activities under their jurisdiction as a result of the
3 coastal and marine spatial planning component of the Na-
4 tional Ocean Policy developed under Executive Order No.
5 13547.

6 (b) REPORT ON EXPENDITURES.—Not later than 60
7 days after the date of enactment of this Act, the President
8 shall submit a report to the Committee on Natural Re-
9 sources of the House of Representatives and the Com-
10 mittee on Energy and Natural Resources of the Senate
11 identifying all Federal expenditures in fiscal years 2011,
12 2012, 2013, and 2014, by the Bureau of Ocean Energy
13 and the Ocean Energy Safety Service and their prede-
14 cessor agencies, by agency, account, and any pertinent
15 subaccounts, for the development, administration, or im-
16 plementation of the coastal and marine spatial planning
17 component of the National Ocean Policy developed under
18 Executive Order No. 13547, including staff time, travel,
19 and other related expenses.

1 **CHAPTER 5—UNITED STATES**
2 **TERRITORIES**

3 **SEC. 4551. APPLICATION OF OUTER CONTINENTAL SHELF**
4 **LANDS ACT WITH RESPECT TO TERRITORIES**
5 **OF THE UNITED STATES.**

6 Section 2 of the Outer Continental Shelf Lands Act
7 (43 U.S.C. 1331) is amended—

8 (1) in paragraph (a), by inserting after “con-
9 trol” the following: “or lying within the United
10 States exclusive economic zone and the Continental
11 Shelf adjacent to any territory of the United
12 States”;

13 (2) in paragraph (p), by striking “and” after
14 the semicolon at the end;

15 (3) in paragraph (q), by striking the period at
16 the end and inserting “; and”; and

17 (4) by adding at the end the following:

18 “(r) The term ‘State’ includes each territory of the
19 United States.”.

1 **CHAPTER 6—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 4561. RULES REGARDING DISTRIBUTION OF REVE-**
4 **NUES UNDER GULF OF MEXICO ENERGY SE-**
5 **CURITY ACT OF 2006.**

6 (a) **IN GENERAL.**—Not later than 60 days after the
7 date of enactment of this Act, the Secretary of the Interior
8 shall issue rules to provide more clarity, certainty, and sta-
9 bility to the revenue streams contemplated by the Gulf of
10 Mexico Energy Security Act of 2006 (43 U.S.C. 1331
11 note).

12 (b) **CONTENTS.**—The rules shall include clarification
13 of the timing and methods of disbursements of funds
14 under section 105(b)(2) of such Act.

15 **SEC. 4562. AMOUNT OF DISTRIBUTED QUALIFIED OUTER**
16 **CONTINENTAL SHELF REVENUES.**

17 Section 105(f)(1) of the Gulf of Mexico Energy Secu-
18 rity Act of 2006 (title I of division C of Public Law 109–
19 432; 43 U.S.C. 1331 note) shall be applied by substituting
20 “2024, and shall not exceed \$999,999,999 for each of fis-
21 cal years 2025 through 2056” for “2055”.

22 **CHAPTER 7—JUDICIAL REVIEW**

23 **SEC. 4571. TIME FOR FILING COMPLAINT.**

24 (a) **IN GENERAL.**—Any cause of action that arises
25 from a covered energy decision must be filed not later than

1 the end of the 60-day period beginning on the date of the
2 covered energy decision. Any cause of action not filed with-
3 in this time period shall be barred.

4 (b) EXCEPTION.—Subsection (a) shall not apply to
5 a cause of action brought by a party to a covered energy
6 lease.

7 **SEC. 4572. DISTRICT COURT DEADLINE.**

8 (a) IN GENERAL.—All proceedings that are subject
9 to section 4571—

10 (1) shall be brought in the United States dis-
11 trict court for the district in which the Federal prop-
12 erty for which a covered energy lease is issued is lo-
13 cated or the United States District Court of the Dis-
14 trict of Columbia;

15 (2) shall be resolved as expeditiously as pos-
16 sible, and in any event not more than 180 days after
17 such cause or claim is filed; and

18 (3) shall take precedence over all other pending
19 matters before the district court.

20 (b) FAILURE TO COMPLY WITH DEADLINE.—If an
21 interlocutory or final judgment, decree, or order has not
22 been issued by the district court by the deadline described
23 under this section, the cause or claim shall be dismissed
24 with prejudice and all rights relating to such cause or
25 claim shall be terminated.

1 **SEC. 4573. ABILITY TO SEEK APPELLATE REVIEW.**

2 An interlocutory or final judgment, decree, or order
3 of the district court in a proceeding that is subject to sec-
4 tion 4571 may be reviewed by the U.S. Court of Appeals
5 for the District of Columbia Circuit. The D.C. Circuit
6 shall resolve any such appeal as expeditiously as possible
7 and, in any event, not more than 180 days after such in-
8 terlocutory or final judgment, decree, or order of the dis-
9 trict court was issued.

10 **SEC. 4574. LIMITATION ON SCOPE OF REVIEW AND RELIEF.**

11 (a) ADMINISTRATIVE FINDINGS AND CONCLU-
12 SIONS.—In any judicial review of any Federal action under
13 this chapter, any administrative findings and conclusions
14 relating to the challenged Federal action shall be pre-
15 sumed to be correct unless shown otherwise by clear and
16 convincing evidence contained in the administrative
17 record.

18 (b) LIMITATION ON PROSPECTIVE RELIEF.—In any
19 judicial review of any action, or failure to act, under this
20 chapter, the Court shall not grant or approve any prospec-
21 tive relief unless the Court finds that such relief is nar-
22 rowly drawn, extends no further than necessary to correct
23 the violation of a Federal law requirement, and is the least
24 intrusive means necessary to correct the violation con-
25 cerned.

1 **SEC. 4575. LEGAL FEES.**

2 Any person filing a petition seeking judicial review
3 of any action, or failure to act, under this chapter who
4 is not a prevailing party shall pay to the prevailing parties
5 (including intervening parties), other than the United
6 States, fees and other expenses incurred by that party in
7 connection with the judicial review, unless the Court finds
8 that the position of the person was substantially justified
9 or that special circumstances make an award unjust.

10 **SEC. 4576. EXCLUSION.**

11 This chapter shall not apply with respect to disputes
12 between the parties to a lease issued pursuant to an au-
13 thorizing leasing statute regarding the obligations of such
14 lease or the alleged breach thereof.

15 **SEC. 4577. DEFINITIONS.**

16 In this chapter, the following definitions apply:

17 (1) COVERED ENERGY DECISION.—The term
18 “covered energy decision” means any action or deci-
19 sion by a Federal official regarding the issuance of
20 a covered energy lease.

21 (2) COVERED ENERGY LEASE.—The term “cov-
22 ered energy lease” means any lease under this sub-
23 title or under an oil and gas leasing program under
24 this subtitle.

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