

113TH CONGRESS
2^D SESSION

H. R. 4

AN ACT

To make revisions to Federal law to improve the conditions necessary for economic growth and job creation, 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.**

2 This Act may be cited as the “Jobs for America Act”.

3 **SEC. 2. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. PAYGO scorecard.

DIVISION I—WAYS AND MEANS

TITLE I—SAVE AMERICAN WORKERS

- Sec. 101. Short title.
- Sec. 102. Repeal of 30-hour threshold for classification as full-time employee for purposes of the employer mandate in the Patient Protection and Affordable Care Act and replacement with 40 hours.

TITLE II—HIRE MORE HEROES

- Sec. 201. Short title.
- Sec. 202. Employees with health coverage under TRICARE or the Veterans Administration may be exempted from employer mandate under Patient Protection and Affordable Care Act.

TITLE III—AMERICAN RESEARCH AND COMPETITIVENESS

- Sec. 301. Short title.
- Sec. 302. Research credit simplified and made permanent.
- Sec. 303. PAYGO Scorecard.

TITLE IV—AMERICA’S SMALL BUSINESS TAX RELIEF

- Sec. 401. Short title.
- Sec. 402. Expensing certain depreciable business assets for small business.
- Sec. 403. Budgetary effects.

TITLE V—S CORPORATION PERMANENT TAX RELIEF

- Sec. 501. Short title.
- Sec. 502. Reduced recognition period for built-in gains of S corporations made permanent.
- Sec. 503. Permanent rule regarding basis adjustment to stock of S corporations making charitable contributions of property.
- Sec. 504. Budgetary effects.

TITLE VI—BONUS DEPRECIATION MODIFIED AND MADE PERMANENT

- Sec. 601. Bonus depreciation modified and made permanent.
- Sec. 602. Budgetary effects.

TITLE VII—REPEAL OF MEDICAL DEVICE EXCISE TAX

- Sec. 701. Repeal of medical device excise tax.

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TITLE I—SMALL BUSINESS CAPITAL ACCESS AND JOB PRESERVATION

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Sec. 102. Registration and reporting exemptions relating to private equity funds advisors.

TITLE II—SMALL BUSINESS MERGERS, ACQUISITIONS, SALES, AND BROKERAGE SIMPLIFICATION

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Sec. 102. Office of Information and Regulatory Affairs publication of information relating to rules.

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- Sec. 202. Timely filings.
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1 **SEC. 3. PAYGO SCORECARD.**

2 The budgetary effects of this Act shall not be entered
3 on either PAYGO scorecard maintained pursuant to sec-
4 tion 4(d) of the Statutory Pay-As-You-Go Act of 2010.

5 **DIVISION I—WAYS AND MEANS**
6 **TITLE I—SAVE AMERICAN**
7 **WORKERS**

8 **SEC. 101. SHORT TITLE.**

9 This title may be cited as the “Save American Work-
10 ers Act of 2014”.

11 **SEC. 102. REPEAL OF 30-HOUR THRESHOLD FOR CLASSI-**
12 **FICATION AS FULL-TIME EMPLOYEE FOR**
13 **PURPOSES OF THE EMPLOYER MANDATE IN**
14 **THE PATIENT PROTECTION AND AFFORD-**
15 **ABLE CARE ACT AND REPLACEMENT WITH 40**
16 **HOURS.**

17 (a) **FULL-TIME EQUIVALENTS.**—Paragraph (2) of
18 section 4980H(c) of the Internal Revenue Code of 1986
19 is amended—

20 (1) by repealing subparagraph (E), and

21 (2) by inserting after subparagraph (D) the fol-
22 lowing new subparagraph:

23 “(E) **FULL-TIME EQUIVALENTS TREATED**
24 **AS FULL-TIME EMPLOYEES.**—Solely for pur-

1 poses of determining whether an employer is an
2 applicable large employer under this paragraph,
3 an employer shall, in addition to the number of
4 full-time employees for any month otherwise de-
5 termined, include for such month a number of
6 full-time employees determined by dividing the
7 aggregate number of hours of service of employ-
8 ees who are not full-time employees for the
9 month by 174.”.

10 (b) FULL-TIME EMPLOYEES.—Paragraph (4) of sec-
11 tion 4980H(c) of the Internal Revenue Code of 1986 is
12 amended—

13 (1) by repealing subparagraph (A), and

14 (2) by inserting before subparagraph (B) the
15 following new subparagraph:

16 “(A) IN GENERAL.—The term ‘full-time
17 employee’ means, with respect to any month, an
18 employee who is employed on average at least
19 40 hours of service per week.”.

20 (c) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to months beginning after Decem-
22 ber 31, 2013.

1 **TITLE II—HIRE MORE HEROES**

2 **SEC. 201. SHORT TITLE.**

3 This title may be cited as the “Hire More Heroes Act
4 of 2014”.

5 **SEC. 202. EMPLOYEES WITH HEALTH COVERAGE UNDER**
6 **TRICARE OR THE VETERANS ADMINISTRA-**
7 **TION MAY BE EXEMPTED FROM EMPLOYER**
8 **MANDATE UNDER PATIENT PROTECTION AND**
9 **AFFORDABLE CARE ACT.**

10 (a) IN GENERAL.—Section 4980H(c)(2) of the Inter-
11 nal Revenue Code of 1986 is amended by adding at the
12 end the following:

13 “(F) EXEMPTION FOR HEALTH COVERAGE
14 UNDER TRICARE OR THE VETERANS ADMINIS-
15 TRATION.—Solely for purposes of determining
16 whether an employer is an applicable large em-
17 ployer under this paragraph for any month, an
18 employer may elect not to take into account for
19 a month as an employee any individual who, for
20 such month, has medical coverage under—

21 “(i) chapter 55 of title 10, United
22 States Code, including coverage under the
23 TRICARE program, or

24 “(ii) under a health care program
25 under chapter 17 or 18 of title 38, United

1 States Code, as determined by the Sec-
2 retary of Veterans Affairs, in coordination
3 with the Secretary of Health and Human
4 Services and the Secretary.”.

5 (b) EFFECTIVE DATE.—The amendment made by
6 subsection (a) shall apply to months beginning after De-
7 cember 31, 2013.

8 **TITLE III—AMERICAN RE-**
9 **SEARCH AND COMPETITIVE-**
10 **NESS**

11 **SEC. 301. SHORT TITLE.**

12 This title may be cited as the “American Research
13 and Competitiveness Act of 2014”.

14 **SEC. 302. RESEARCH CREDIT SIMPLIFIED AND MADE PER-**
15 **MANENT.**

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

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

22 “(1) 20 percent of so much of the qualified re-
23 search expenses for the taxable year as exceeds 50
24 percent of the average qualified research expenses

1 for the 3 taxable years preceding the taxable year
2 for which the credit is being determined,

3 “(2) 20 percent of so much of the basic re-
4 search payments for the taxable year as exceeds 50
5 percent of the average basic research payments for
6 the 3 taxable years preceding the taxable year for
7 which the credit is being determined, plus

8 “(3) 20 percent of the amounts paid or in-
9 curred by the taxpayer in carrying on any trade or
10 business of the taxpayer during the taxable year (in-
11 cluding as contributions) to an energy research con-
12 sortium for energy research.”.

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

15 (c) CONFORMING AMENDMENTS.—

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

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

20 “(1) SPECIAL RULE IN CASE OF NO QUALIFIED
21 RESEARCH EXPENDITURES IN ANY OF 3 PRECEDING
22 TAXABLE YEARS.—In any case in which the taxpayer
23 has no qualified research expenses in any one of the
24 3 taxable years preceding the taxable year for which
25 the credit is being determined, the amount deter-

1 mined under subsection (a)(1) for such taxable year
2 shall be equal to 10 percent of the qualified research
3 expenses for the taxable year.

4 “(2) CONSISTENT TREATMENT OF EX-
5 PENSES.—

6 “(A) IN GENERAL.—Notwithstanding
7 whether the period for filing a claim for credit
8 or refund has expired for any taxable year
9 taken into account in determining the average
10 qualified research expenses, or average basic re-
11 search payments, taken into account under sub-
12 section (a), the qualified research expenses and
13 basic research payments taken into account in
14 determining such averages shall be determined
15 on a basis consistent with the determination of
16 qualified research expenses and basic research
17 payments, respectively, for the credit year.

18 “(B) PREVENTION OF DISTORTIONS.—The
19 Secretary may prescribe regulations to prevent
20 distortions in calculating a taxpayer’s qualified
21 research expenses or basic research payments
22 caused by a change in accounting methods used
23 by such taxpayer between the current year and
24 a year taken into account in determining the
25 average qualified research expenses or average

1 basic research payments taken into account
2 under subsection (a).”.

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

4 (A) by striking all that precedes paragraph
5 (6) and inserting the following:

6 “(e) BASIC RESEARCH PAYMENTS.—For purposes of
7 this section—

8 “(1) IN GENERAL.—The term ‘basic research
9 payment’ means, with respect to any taxable year,
10 any amount paid in cash during such taxable year
11 by a corporation to any qualified organization for
12 basic research but only if—

13 “(A) such payment is pursuant to a writ-
14 ten agreement between such corporation and
15 such qualified organization, and

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

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

23 (B) by redesignating paragraphs (6) and
24 (7) as paragraphs (3) and (4), respectively, and

1 (C) in paragraph (4) as so redesignated,
2 by striking subparagraphs (B) and (C) and by
3 redesignating subparagraphs (D) and (E) as
4 subparagraphs (B) and (C), respectively.

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

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

9 (ii) by striking clause (iii) of subparagraph
10 (A) and redesignating clauses (iv), (v), and (vi),
11 thereof, as clauses (iii), (iv), and (v), respec-
12 tively,

13 (iii) by striking “and (iv)” each place it
14 appears in subparagraph (A)(iv) (as so redesign-
15 ated) and inserting “and (iii)”,

16 (iv) by striking subclause (IV) of subpara-
17 graph (A)(iv) (as so redesignated), by striking
18 “, and” at the end of subparagraph (A)(iv)(III)
19 (as so redesignated) and inserting a period, and
20 by adding “and” at the end of subparagraph
21 (A)(iv)(II) (as so redesignated),

22 (v) by striking “(A)(vi)” in subparagraph
23 (B) and inserting “(A)(v)”, and

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

1 (B) by striking “, and the gross receipts of
2 the predecessor,” in subparagraph (A)(iv)(II)
3 (as so redesignated),

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

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

8 (E) by striking subparagraph (C).

9 (4) Section 45C(b)(1) of such Code is amended
10 by striking subparagraph (D).

11 (d) EFFECTIVE DATE.—

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

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

19 **SEC. 303. PAYGO SCORECARD.**

20 (a) PAYGO SCORECARD.—The budgetary effects of
21 this title shall not be entered on either PAYGO scorecard
22 maintained pursuant to section 4(d) of the Statutory Pay-
23 As-You-Go Act of 2010.

24 (b) SENATE PAYGO SCORECARD.—The budgetary ef-
25 fects of this title shall not be entered on any PAYGO

1 scorecard maintained for purposes of section 201 of S.
2 Con. Res. 21 (110th Congress).

3 **TITLE IV—AMERICA’S SMALL**
4 **BUSINESS TAX RELIEF**

5 **SEC. 401. SHORT TITLE.**

6 This title may be cited as the “America’s Small Busi-
7 ness Tax Relief Act of 2014”.

8 **SEC. 402. EXPENSING CERTAIN DEPRECIABLE BUSINESS**
9 **ASSETS FOR SMALL BUSINESS.**

10 (a) IN GENERAL.—

11 (1) DOLLAR LIMITATION.—Paragraph (1) of
12 section 179(b) of the Internal Revenue Code of 1986
13 is amended by striking “shall not exceed—” and all
14 that follows and inserting “shall not exceed
15 \$500,000.”.

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

20 (b) COMPUTER SOFTWARE.—Clause (ii) of section
21 179(d)(1)(A) of such Code is amended by striking “, to
22 which section 167 applies, and which is placed in service
23 in a taxable year beginning after 2002 and before 2014”
24 and inserting “and to which section 167 applies”.

1 (c) ELECTION.—Paragraph (2) of section 179(e) of
2 such Code is amended—

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

5 (2) by striking “IRREVOCABLE” in the heading
6 thereof.

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

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

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

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

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

19 “(6) INFLATION ADJUSTMENT.—

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

24 “(i) such dollar amount, multiplied by

1 “(ii) the cost-of-living adjustment de-
2 termined under section 1(f)(3) for the cal-
3 endar year in which such taxable year be-
4 gins, determined by substituting ‘calendar
5 year 2013’ for ‘calendar year 1992’ in sub-
6 paragraph (B) thereof.

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

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

13 **SEC. 403. BUDGETARY EFFECTS.**

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

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

1 **TITLE V—S CORPORATION**
2 **PERMANENT TAX RELIEF**

3 **SEC. 501. SHORT TITLE.**

4 This title may be cited as the “S Corporation Perma-
5 nent Tax Relief Act of 2014”.

6 **SEC. 502. REDUCED RECOGNITION PERIOD FOR BUILT-IN**
7 **GAINS OF S CORPORATIONS MADE PERMA-**
8 **NENT.**

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

12 “(7) RECOGNITION PERIOD.—

13 “(A) IN GENERAL.—The term ‘recognition
14 period’ means the 5-year period beginning with
15 the 1st day of the 1st taxable year for which
16 the corporation was an S corporation. For pur-
17 poses of applying this section to any amount in-
18 cludible in income by reason of distributions to
19 shareholders pursuant to section 593(e), the
20 preceding sentence shall be applied without re-
21 gard to the phrase ‘5-year’.

22 “(B) INSTALLMENT SALES.—If an S cor-
23 poration sells an asset and reports the income
24 from the sale using the installment method
25 under section 453, the treatment of all pay-

1 ments received shall be governed by the provi-
2 sions of this paragraph applicable to the taxable
3 year in which such sale was made.”.

4 (b) EFFECTIVE DATE.—The amendment made by
5 this section shall apply to taxable years beginning after
6 December 31, 2013.

7 **SEC. 503. PERMANENT RULE REGARDING BASIS ADJUST-**
8 **MENT TO STOCK OF S CORPORATIONS MAK-**
9 **ING CHARITABLE CONTRIBUTIONS OF PROP-**
10 **ERTY.**

11 (a) IN GENERAL.—Section 1367(a)(2) of the Internal
12 Revenue Code of 1986 is amended by striking the last sen-
13 tence.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to contributions made in taxable
16 years beginning after December 31, 2013.

17 **SEC. 504. BUDGETARY EFFECTS.**

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

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

1 **TITLE VI—BONUS DEPRECIATION**
2 **MODIFIED AND MADE**
3 **PERMANENT**

4 **SEC. 601. 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. 602. 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 VII—REPEAL OF MEDICAL**
17 **DEVICE EXCISE TAX**

18 **SEC. 701. REPEAL OF MEDICAL DEVICE EXCISE TAX.**

19 (a) IN GENERAL.—Chapter 32 of the Internal Rev-
20 enue Code of 1986 is amended by striking subchapter E.

21 (b) CONFORMING AMENDMENTS.—

22 (1) Subsection (a) of section 4221 of such Code
23 is amended by striking the last sentence.

24 (2) Paragraph (2) of section 6416(b) of such
25 Code is amended by striking the last sentence.

1 (3) The table of subchapters for chapter 32 of
2 such Code is amended by striking the item relating
3 to subchapter E.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall apply to sales after December 31, 2012.

6 **SEC. 702. BUDGETARY EFFECTS.**

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

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

15 **DIVISION II—FINANCIAL**
16 **SERVICES**
17 **TITLE I—SMALL BUSINESS CAP-**
18 **ITAL ACCESS AND JOB PRES-**
19 **ERVATION**

20 **SEC. 101. SHORT TITLE.**

21 This title may be cited as the “Small Business Cap-
22 ital Access and Job Preservation Act”.

1 **SEC. 102. REGISTRATION AND REPORTING EXEMPTIONS**
2 **RELATING TO PRIVATE EQUITY FUNDS ADVI-**
3 **SORS.**

4 Section 203 of the Investment Advisers Act of 1940
5 (15 U.S.C. 80b-3) is amended by adding at the end the
6 following:

7 “(o) EXEMPTION OF AND REPORTING REQUIRE-
8 MENTS BY PRIVATE EQUITY FUNDS ADVISORS.—

9 “(1) IN GENERAL.—Except as provided in this
10 subsection, no investment adviser shall be subject to
11 the registration or reporting requirements of this
12 title with respect to the provision of investment ad-
13 vice relating to a private equity fund or funds, pro-
14 vided that each such fund has not borrowed and
15 does not have outstanding a principal amount in ex-
16 cess of twice its invested capital commitments.

17 “(2) MAINTENANCE OF RECORDS AND ACCESS
18 BY COMMISSION.—Not later than 6 months after the
19 date of enactment of this subsection, the Commis-
20 sion shall issue final rules—

21 “(A) to require investment advisers de-
22 scribed in paragraph (1) to maintain such
23 records and provide to the Commission such an-
24 nual or other reports as the Commission may
25 require taking into account fund size, govern-
26 ance, investment strategy, risk, and other fac-

1 tors, as the Commission determines necessary
2 and appropriate in the public interest and for
3 the protection of investors; and

4 “(B) to define the term ‘private equity
5 fund’ for purposes of this subsection.”.

6 **TITLE II—SMALL BUSINESS**
7 **MERGERS, ACQUISITIONS,**
8 **SALES, AND BROKERAGE SIM-**
9 **PLIFICATION**

10 **SEC. 201. SHORT TITLE.**

11 This title may be cited as the “Small Business Merg-
12 ers, Acquisitions, Sales, and Brokerage Simplification Act
13 of 2014”.

14 **SEC. 202. REGISTRATION EXEMPTION FOR MERGER AND**
15 **ACQUISITION BROKERS.**

16 Section 15(b) of the Securities Exchange Act of 1934
17 (15 U.S.C. 78o(b)) is amended by adding at the end the
18 following:

19 “(13) REGISTRATION EXEMPTION FOR MERGER
20 AND ACQUISITION BROKERS.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), an M&A broker shall be ex-
23 empt from registration under this section.

24 “(B) EXCLUDED ACTIVITIES.—An M&A
25 broker is not exempt from registration under

1 this paragraph if such broker does any of the
2 following:

3 “(i) Directly or indirectly, in connec-
4 tion with the transfer of ownership of an
5 eligible privately held company, receives,
6 holds, transmits, or has custody of the
7 funds or securities to be exchanged by the
8 parties to the transaction.

9 “(ii) Engages on behalf of an issuer in
10 a public offering of any class of securities
11 that is registered, or is required to be reg-
12 istered, with the Commission under section
13 12 or with respect to which the issuer files,
14 or is required to file, periodic information,
15 documents, and reports under subsection
16 (d).

17 “(C) RULE OF CONSTRUCTION.—Nothing
18 in this paragraph shall be construed to limit
19 any other authority of the Commission to ex-
20 empt any person, or any class of persons, from
21 any provision of this title, or from any provision
22 of any rule or regulation thereunder.

23 “(D) DEFINITIONS.—In this paragraph:

24 “(i) CONTROL.—The term ‘control’
25 means the power, directly or indirectly, to

1 direct the management or policies of a
2 company, whether through ownership of
3 securities, by contract, or otherwise. There
4 is a presumption of control for any person
5 who—

6 “(I) is a director, general part-
7 ner, member or manager of a limited
8 liability company, or officer exercising
9 executive responsibility (or has similar
10 status or functions);

11 “(II) has the right to vote 20
12 percent or more of a class of voting
13 securities or the power to sell or direct
14 the sale of 20 percent or more of a
15 class of voting securities; or

16 “(III) in the case of a partner-
17 ship or limited liability company, has
18 the right to receive upon dissolution,
19 or has contributed, 20 percent or
20 more of the capital.

21 “(ii) ELIGIBLE PRIVATELY HELD
22 COMPANY.—The term ‘eligible privately
23 held company’ means a company that
24 meets both of the following conditions:

1 “(I) The company does not have
2 any class of securities registered, or
3 required to be registered, with the
4 Commission under section 12 or with
5 respect to which the company files, or
6 is required to file, periodic informa-
7 tion, documents, and reports under
8 subsection (d).

9 “(II) In the fiscal year ending
10 immediately before the fiscal year in
11 which the services of the M&A broker
12 are initially engaged with respect to
13 the securities transaction, the com-
14 pany meets either or both of the fol-
15 lowing conditions (determined in ac-
16 cordance with the historical financial
17 accounting records of the company):

18 “(aa) The earnings of the
19 company before interest, taxes,
20 depreciation, and amortization
21 are less than \$25,000,000.

22 “(bb) The gross revenues of
23 the company are less than
24 \$250,000,000.

1 “(iii) M&A BROKER.—The term ‘M&A
2 broker’ means a broker, and any person
3 associated with a broker, engaged in the
4 business of effecting securities transactions
5 solely in connection with the transfer of
6 ownership of an eligible privately held com-
7 pany, regardless of whether the broker acts
8 on behalf of a seller or buyer, through the
9 purchase, sale, exchange, issuance, repur-
10 chase, or redemption of, or a business com-
11 bination involving, securities or assets of
12 the eligible privately held company, if the
13 broker reasonably believes that—

14 “(I) upon consummation of the
15 transaction, any person acquiring se-
16 curities or assets of the eligible pri-
17 vately held company, acting alone or
18 in concert, will control and, directly or
19 indirectly, will be active in the man-
20 agement of the eligible privately held
21 company or the business conducted
22 with the assets of the eligible privately
23 held company; and

24 “(II) if any person is offered se-
25 curities in exchange for securities or

1 assets of the eligible privately held
2 company, such person will, prior to
3 becoming legally bound to consum-
4 mate the transaction, receive or have
5 reasonable access to the most recent
6 year-end balance sheet, income state-
7 ment, statement of changes in finan-
8 cial position, and statement of owner’s
9 equity of the issuer of the securities
10 offered in exchange, and, if the finan-
11 cial statements of the issuer are au-
12 dited, the related report of the inde-
13 pendent auditor, a balance sheet
14 dated not more than 120 days before
15 the date of the offer, and information
16 pertaining to the management, busi-
17 ness, results of operations for the pe-
18 riod covered by the foregoing financial
19 statements, and material loss contin-
20 gencies of the issuer.

21 “(E) INFLATION ADJUSTMENT.—

22 “(i) IN GENERAL.—On the date that
23 is 5 years after the date of the enactment
24 of the Small Business Mergers, Acquisi-
25 tions, Sales, and Brokerage Simplification

1 Act of 2014, and every 5 years thereafter,
2 each dollar amount in subparagraph
3 (D)(ii)(II) shall be adjusted by—

4 “(I) dividing the annual value of
5 the Employment Cost Index For
6 Wages and Salaries, Private Industry
7 Workers (or any successor index), as
8 published by the Bureau of Labor
9 Statistics, for the calendar year pre-
10 ceding the calendar year in which the
11 adjustment is being made by the an-
12 nual value of such index (or suc-
13 cessor) for the calendar year ending
14 December 31, 2012; and

15 “(II) multiplying such dollar
16 amount by the quotient obtained
17 under subclause (I).

18 “(ii) ROUNDING.—Each dollar
19 amount determined under clause (i) shall
20 be rounded to the nearest multiple of
21 \$100,000.”.

22 **SEC. 203. EFFECTIVE DATE.**

23 This title and any amendment made by this title shall
24 take effect on the date that is 90 days after the date of
25 the enactment of this Act.

1 **DIVISION III—OVERSIGHT**
2 **SUBDIVISION A—UNFUNDED**
3 **MANDATES INFORMATION**
4 **AND TRANSPARENCY**

5 **SEC. 101. SHORT TITLE.**

6 This subdivision may be cited as the “Unfunded
7 Mandates Information and Transparency Act of 2014”.

8 **SEC. 102. PURPOSE.**

9 The purpose of this title is—

10 (1) to improve the quality of the deliberations
11 of Congress with respect to proposed Federal man-
12 dates by—

13 (A) providing Congress and the public with
14 more complete information about the effects of
15 such mandates; and

16 (B) ensuring that Congress acts on such
17 mandates only after focused deliberation on
18 their effects; and

19 (2) to enhance the ability of Congress and the
20 public to identify Federal mandates that may impose
21 undue harm on consumers, workers, employers,
22 small businesses, and State, local, and tribal govern-
23 ments.

1 **SEC. 103. PROVIDING FOR CONGRESSIONAL BUDGET OF-**
2 **FICE STUDIES ON POLICIES INVOLVING**
3 **CHANGES IN CONDITIONS OF GRANT AID.**

4 Section 202(g) of the Congressional Budget Act of
5 1974 (2 U.S.C. 602(g)) is amended by adding at the end
6 the following new paragraph:

7 “(3) **ADDITIONAL STUDIES.**—At the request of
8 any Chairman or ranking member of the minority of
9 a Committee of the Senate or the House of Rep-
10 resentatives, the Director shall conduct an assess-
11 ment comparing the authorized level of funding in a
12 bill or resolution to the prospective costs of carrying
13 out any changes to a condition of Federal assistance
14 being imposed on State, local, or tribal governments
15 participating in the Federal assistance program con-
16 cerned or, in the case of a bill or joint resolution
17 that authorizes such sums as are necessary, an as-
18 sessment of an estimated level of funding compared
19 to such costs.”.

20 **SEC. 104. CLARIFYING THE DEFINITION OF DIRECT COSTS**
21 **TO REFLECT CONGRESSIONAL BUDGET OF-**
22 **FICE PRACTICE.**

23 Section 421(3) of the Congressional Budget Act of
24 1974 (2 U.S.C. 658(3)(A)(i)) is amended—

25 (1) in subparagraph (A)(i), by inserting “incur
26 or” before “be required”; and

1 (2) in subparagraph (B), by inserting after “to
2 spend” the following: “or could forgo in profits, in-
3 cluding costs passed on to consumers or other enti-
4 ties taking into account, to the extent practicable,
5 behavioral changes,”.

6 **SEC. 105. EXPANDING THE SCOPE OF REPORTING RE-**
7 **QUIREMENTS TO INCLUDE REGULATIONS IM-**
8 **POSED BY INDEPENDENT REGULATORY**
9 **AGENCIES.**

10 Paragraph (1) of section 421 of the Congressional
11 Budget Act of 1974 (2 U.S.C. 658) is amended by striking
12 “, but does not include independent regulatory agencies”
13 and inserting “, except it does not include the Board of
14 Governors of the Federal Reserve System or the Federal
15 Open Market Committee”.

16 **SEC. 106. AMENDMENTS TO REPLACE OFFICE OF MANAGE-**
17 **MENT AND BUDGET WITH OFFICE OF INFOR-**
18 **MATION AND REGULATORY AFFAIRS.**

19 The Unfunded Mandates Reform Act of 1995 (Public
20 Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

21 (1) in section 103(c) (2 U.S.C. 1511(c))—

22 (A) in the subsection heading, by striking
23 “OFFICE OF MANAGEMENT AND BUDGET” and
24 inserting “OFFICE OF INFORMATION AND REG-
25 ULATORY AFFAIRS”; and

1 (B) by striking “Director of the Office of
2 Management and Budget” and inserting “Ad-
3 ministrator of the Office of Information and
4 Regulatory Affairs”;

5 (2) in section 205(e) (2 U.S.C. 1535(c))—

6 (A) in the subsection heading, by striking
7 “OMB”; and

8 (B) by striking “Director of the Office of
9 Management and Budget” and inserting “Ad-
10 ministrator of the Office of Information and
11 Regulatory Affairs”; and

12 (3) in section 206 (2 U.S.C. 1536), by striking
13 “Director of the Office of Management and Budget”
14 and inserting “Administrator of the Office of Infor-
15 mation and Regulatory Affairs”.

16 **SEC. 107. APPLYING SUBSTANTIVE POINT OF ORDER TO**
17 **PRIVATE SECTOR MANDATES.**

18 Section 425(a)(2) of the Congressional Budget Act
19 of 1974 (2 U.S.C. 658d(a)(2)) is amended—

20 (1) by striking “Federal intergovernmental
21 mandates” and inserting “Federal mandates”; and

22 (2) by inserting “or 424(b)(1)” after “section
23 424(a)(1)”.

1 **SEC. 108. REGULATORY PROCESS AND PRINCIPLES.**

2 Section 201 of the Unfunded Mandates Reform Act
3 of 1995 (2 U.S.C. 1531) is amended to read as follows:

4 **“SEC. 201. REGULATORY PROCESS AND PRINCIPLES.**

5 “(a) IN GENERAL.—Each agency shall, unless other-
6 wise expressly prohibited by law, assess the effects of Fed-
7 eral regulatory actions on State, local, and tribal govern-
8 ments and the private sector (other than to the extent that
9 such regulatory actions incorporate requirements specifi-
10 cally set forth in law) in accordance with the following
11 principles:

12 “(1) Each agency shall identify the problem
13 that it intends to address (including, if applicable,
14 the failures of private markets or public institutions
15 that warrant new agency action) as well as assess
16 the significance of that problem.

17 “(2) Each agency shall examine whether exist-
18 ing regulations (or other law) have created, or con-
19 tributed to, the problem that a new regulation is in-
20 tended to correct and whether those regulations (or
21 other law) should be modified to achieve the in-
22 tended goal of regulation more effectively.

23 “(3) Each agency shall identify and assess
24 available alternatives to direct regulation, including
25 providing economic incentives to encourage the de-
26 sired behavior, such as user fees or marketable per-

1 mits, or providing information upon which choices
2 can be made by the public.

3 “(4) If an agency determines that a regulation
4 is the best available method of achieving the regu-
5 latory objective, it shall design its regulations in the
6 most cost-effective manner to achieve the regulatory
7 objective. In doing so, each agency shall consider in-
8 centives for innovation, consistency, predictability,
9 the costs of enforcement and compliance (to the gov-
10 ernment, regulated entities, and the public), flexi-
11 bility, distributive impacts, and equity.

12 “(5) Each agency shall assess both the costs
13 and the benefits of the intended regulation and, rec-
14 ognizing that some costs and benefits are difficult to
15 quantify, propose or adopt a regulation, unless ex-
16 pressly prohibited by law, only upon a reasoned de-
17 termination that the benefits of the intended regula-
18 tion justify its costs.

19 “(6) Each agency shall base its decisions on the
20 best reasonably obtainable scientific, technical, eco-
21 nomic, and other information concerning the need
22 for, and consequences of, the intended regulation.

23 “(7) Each agency shall identify and assess al-
24 ternative forms of regulation and shall, to the extent
25 feasible, specify performance objectives, rather than

1 specifying the behavior or manner of compliance
2 that regulated entities must adopt.

3 “(8) Each agency shall avoid regulations that
4 are inconsistent, incompatible, or duplicative with its
5 other regulations or those of other Federal agencies.

6 “(9) Each agency shall tailor its regulations to
7 minimize the costs of the cumulative impact of regu-
8 lations.

9 “(10) Each agency shall draft its regulations to
10 be simple and easy to understand, with the goal of
11 minimizing the potential for uncertainty and litiga-
12 tion arising from such uncertainty.

13 “(b) REGULATORY ACTION DEFINED.—In this sec-
14 tion, the term ‘regulatory action’ means any substantive
15 action by an agency (normally published in the Federal
16 Register) that promulgates or is expected to lead to the
17 promulgation of a final rule or regulation, including ad-
18 vance notices of proposed rulemaking and notices of pro-
19 posed rulemaking.”

20 **SEC. 109. EXPANDING THE SCOPE OF STATEMENTS TO AC-**
21 **COMPANY SIGNIFICANT REGULATORY AC-**
22 **TIONS.**

23 (a) IN GENERAL.—Subsection (a) of section 202 of
24 the Unfunded Mandates Reform Act of 1995 (2 U.S.C.
25 1532) is amended to read as follows:

1 “(a) IN GENERAL.—Unless otherwise expressly pro-
2 hibited by law, before promulgating any general notice of
3 proposed rulemaking or any final rule, or within six
4 months after promulgating any final rule that was not pre-
5 ceded by a general notice of proposed rulemaking, if the
6 proposed rulemaking or final rule includes a Federal man-
7 date that may result in an annual effect on State, local,
8 or tribal governments, or to the private sector, in the ag-
9 gregate of \$100,000,000 or more in any 1 year, the agency
10 shall prepare a written statement containing the following:

11 “(1) The text of the draft proposed rulemaking
12 or final rule, together with a reasonably detailed de-
13 scription of the need for the proposed rulemaking or
14 final rule and an explanation of how the proposed
15 rulemaking or final rule will meet that need.

16 “(2) An assessment of the potential costs and
17 benefits of the proposed rulemaking or final rule, in-
18 cluding an explanation of the manner in which the
19 proposed rulemaking or final rule is consistent with
20 a statutory requirement and avoids undue inter-
21 ference with State, local, and tribal governments in
22 the exercise of their governmental functions.

23 “(3) A qualitative and quantitative assessment,
24 including the underlying analysis, of benefits antici-
25 pated from the proposed rulemaking or final rule

1 (such as the promotion of the efficient functioning of
2 the economy and private markets, the enhancement
3 of health and safety, the protection of the natural
4 environment, and the elimination or reduction of dis-
5 crimination or bias).

6 “(4) A qualitative and quantitative assessment,
7 including the underlying analysis, of costs antici-
8 pated from the proposed rulemaking or final rule
9 (such as the direct costs both to the Government in
10 administering the final rule and to businesses and
11 others in complying with the final rule, and any ad-
12 verse effects on the efficient functioning of the econ-
13 omy, private markets (including productivity, em-
14 ployment, and international competitiveness), health,
15 safety, and the natural environment).

16 “(5) Estimates by the agency, if and to the ex-
17 tent that the agency determines that accurate esti-
18 mates are reasonably feasible, of—

19 “(A) the future compliance costs of the
20 Federal mandate; and

21 “(B) any disproportionate budgetary ef-
22 fects of the Federal mandate upon any par-
23 ticular regions of the Nation or particular
24 State, local, or tribal governments, urban or

1 rural or other types of communities, or par-
2 ticular segments of the private sector.

3 “(6)(A) A detailed description of the extent of
4 the agency’s prior consultation with the private sec-
5 tor and elected representatives (under section 204)
6 of the affected State, local, and tribal governments.

7 “(B) A detailed summary of the comments and
8 concerns that were presented by the private sector
9 and State, local, or tribal governments either orally
10 or in writing to the agency.

11 “(C) A detailed summary of the agency’s eval-
12 uation of those comments and concerns.

13 “(7) A detailed summary of how the agency
14 complied with each of the regulatory principles de-
15 scribed in section 201.”.

16 (b) REQUIREMENT FOR DETAILED SUMMARY.—Sub-
17 section (b) of section 202 of such Act is amended by in-
18 serting “detailed” before “summary”.

19 **SEC. 110. ENHANCED STAKEHOLDER CONSULTATION.**

20 Section 204 of the Unfunded Mandates Reform Act
21 of 1995 (2 U.S.C. 1534) is amended—

22 (1) in the section heading, by inserting “**AND**
23 **PRIVATE SECTOR**” before “**INPUT**”;

24 (2) in subsection (a)—

1 (A) by inserting “, and impacted parties
2 within the private sector (including small busi-
3 ness),” after “on their behalf”;

4 (B) by striking “Federal intergovernmental
5 mandates” and inserting “Federal mandates”;
6 and

7 (3) by amending subsection (c) to read as fol-
8 lows:

9 “(c) GUIDELINES.—For appropriate implementation
10 of subsections (a) and (b) consistent with applicable laws
11 and regulations, the following guidelines shall be followed:

12 “(1) Consultations shall take place as early as
13 possible, before issuance of a notice of proposed rule-
14 making, continue through the final rule stage, and
15 be integrated explicitly into the rulemaking process.

16 “(2) Agencies shall consult with a wide variety
17 of State, local, and tribal officials and impacted par-
18 ties within the private sector (including small busi-
19 nesses). Geographic, political, and other factors that
20 may differentiate varying points of view should be
21 considered.

22 “(3) Agencies should estimate benefits and
23 costs to assist with these consultations. The scope of
24 the consultation should reflect the cost and signifi-
25 cance of the Federal mandate being considered.

1 “(4) Agencies shall, to the extent practicable—

2 “(A) seek out the views of State, local, and
3 tribal governments, and impacted parties within
4 the private sector (including small business), on
5 costs, benefits, and risks; and

6 “(B) solicit ideas about alternative meth-
7 ods of compliance and potential flexibilities, and
8 input on whether the Federal regulation will
9 harmonize with and not duplicate similar laws
10 in other levels of government.

11 “(5) Consultations shall address the cumulative
12 impact of regulations on the affected entities.

13 “(6) Agencies may accept electronic submis-
14 sions of comments by relevant parties but may not
15 use those comments as the sole method of satisfying
16 the guidelines in this subsection.”.

17 **SEC. 111. NEW AUTHORITIES AND RESPONSIBILITIES FOR**
18 **OFFICE OF INFORMATION AND REGULATORY**
19 **AFFAIRS.**

20 Section 208 of the Unfunded Mandates Reform Act
21 of 1995 (2 U.S.C. 1538) is amended to read as follows:

22 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**
23 **FAIRS RESPONSIBILITIES.**

24 “(a) IN GENERAL.—The Administrator of the Office
25 of Information and Regulatory Affairs shall provide mean-

1 ingful guidance and oversight so that each agency’s regu-
2 lations for which a written statement is required under
3 section 202 are consistent with the principles and require-
4 ments of this title, as well as other applicable laws, and
5 do not conflict with the policies or actions of another agen-
6 cy. If the Administrator determines that an agency’s regu-
7 lations for which a written statement is required under
8 section 202 do not comply with such principles and re-
9 quirements, are not consistent with other applicable laws,
10 or conflict with the policies or actions of another agency,
11 the Administrator shall identify areas of non-compliance,
12 notify the agency, and request that the agency comply be-
13 fore the agency finalizes the regulation concerned.

14 “(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-
15 CY COMPLIANCE.—The Director of the Office of Informa-
16 tion and Regulatory Affairs annually shall submit to Con-
17 gress, including the Committee on Homeland Security and
18 Governmental Affairs of the Senate and the Committee
19 on Oversight and Government Reform of the House of
20 Representatives, a written report detailing compliance by
21 each agency with the requirements of this title that relate
22 to regulations for which a written statement is required
23 by section 202, including activities undertaken at the re-
24 quest of the Director to improve compliance, during the
25 preceding reporting period. The report shall also contain

1 an appendix detailing compliance by each agency with sec-
2 tion 204.”.

3 **SEC. 112. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
4 **ERAL REGULATIONS.**

5 The Unfunded Mandates Reform Act of 1995 (Public
6 Law 104–4; 2 U.S.C. 1511 et seq.) is amended—

7 (1) by redesignating section 209 as section 210;

8 and

9 (2) by inserting after section 208 the following
10 new section 209:

11 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**
12 **ERAL REGULATIONS.**

13 “(a) REQUIREMENT.—At the request of the chairman
14 or ranking minority member of a standing or select com-
15 mittee of the House of Representatives or the Senate, an
16 agency shall conduct a retrospective analysis of an existing
17 Federal regulation promulgated by an agency.

18 “(b) REPORT.—Each agency conducting a retrospec-
19 tive analysis of existing Federal regulations pursuant to
20 subsection (a) shall submit to the chairman of the relevant
21 committee, Congress, and the Comptroller General a re-
22 port containing, with respect to each Federal regulation
23 covered by the analysis—

24 “(1) a copy of the Federal regulation;

1 “(2) the continued need for the Federal regula-
2 tion;

3 “(3) the nature of comments or complaints re-
4 ceived concerning the Federal regulation from the
5 public since the Federal regulation was promulgated;

6 “(4) the extent to which the Federal regulation
7 overlaps, duplicates, or conflicts with other Federal
8 regulations, and, to the extent feasible, with State
9 and local governmental rules;

10 “(5) the degree to which technology, economic
11 conditions, or other factors have changed in the area
12 affected by the Federal regulation;

13 “(6) a complete analysis of the retrospective di-
14 rect costs and benefits of the Federal regulation that
15 considers studies done outside the Federal Govern-
16 ment (if any) estimating such costs or benefits; and

17 “(7) any litigation history challenging the Fed-
18 eral regulation.”.

19 **SEC. 113. EXPANSION OF JUDICIAL REVIEW.**

20 Section 401(a) of the Unfunded Mandates Reform
21 Act of 1995 (2 U.S.C. 1571(a)) is amended—

22 (1) in paragraphs (1) and (2)(A)—

23 (A) by striking “sections 202 and
24 203(a)(1) and (2)” each place it appears and

1 inserting “sections 201, 202, 203(a)(1) and (2),
2 and 205(a) and (b)”;

3 (B) by striking “only” each place it ap-
4 pears;

5 (2) in paragraph (2)(B), by striking “section
6 202” and all that follows through the period at the
7 end and inserting the following: “section 202, pre-
8 pare the written plan under section 203(a)(1) and
9 (2), or comply with section 205(a) and (b), a court
10 may compel the agency to prepare such written
11 statement, prepare such written plan, or comply with
12 such section.”; and

13 (3) in paragraph (3), by striking “written state-
14 ment or plan is required” and all that follows
15 through “shall not” and inserting the following:
16 “written statement under section 202, a written plan
17 under section 203(a)(1) and (2), or compliance with
18 sections 201 and 205(a) and (b) is required, the in-
19 adequacy or failure to prepare such statement (in-
20 cluding the inadequacy or failure to prepare any es-
21 timate, analysis, statement, or description), to pre-
22 pare such written plan, or to comply with such sec-
23 tion may”.

1 **SUBDIVISION B—ACHIEVING**
2 **LESS EXCESS IN REGULATION**
3 **AND REQUIRING TRANS-**
4 **PARENCY**

5 **SEC. 100. SHORT TITLE; TABLE OF CONTENTS.**

6 This subdivision may be cited as the “Achieving Less
7 Excess in Regulation and Requiring Transparency Act of
8 2014” or as the “ALERRT Act of 2014”.

9 **TITLE I—ALL ECONOMIC REGU-**
10 **LATIONS ARE TRANSPARENT**
11 **ACT**

12 **SEC. 101. SHORT TITLE.**

13 This title may be cited as the “All Economic Regula-
14 tions are Transparent Act of 2014” or the “ALERT Act
15 of 2014”.

16 **SEC. 102. OFFICE OF INFORMATION AND REGULATORY AF-**
17 **FAIRS PUBLICATION OF INFORMATION RE-**
18 **LATING TO RULES.**

19 (a) AMENDMENT.—Title 5, United States Code, is
20 amended by inserting after chapter 6, the following new
21 chapter:

1 **“CHAPTER 6A—OFFICE OF INFORMATION**
2 **AND REGULATORY AFFAIRS PUBLICA-**
3 **TION OF INFORMATION RELATING TO**
4 **RULES**

“Sec.

“651. Agency monthly submission to Office of Information and Regulatory Affairs.

“652. Office of Information and Regulatory Affairs Publications.

“653. Requirement for rules to appear in agency-specific monthly publication.

“654. Definitions.

5 **“§ 651. Agency monthly submission to Office of Infor-**
6 **mation and Regulatory Affairs**

7 “On a monthly basis, the head of each agency shall
8 submit to the Administrator of the Office of Information
9 and Regulatory Affairs (referred to in this chapter as the
10 ‘Administrator’), in such a manner as the Administrator
11 may reasonably require, the following information:

12 “(1) For each rule that the agency expects to
13 propose or finalize during the following year:

14 “(A) A summary of the nature of the rule,
15 including the regulation identifier number and
16 the docket number for the rule.

17 “(B) The objectives of and legal basis for
18 the issuance of the rule, including—

19 “(i) any statutory or judicial deadline;
20 and

21 “(ii) whether the legal basis restricts
22 or precludes the agency from conducting

1 an analysis of the costs or benefits of the
2 rule during the rule making, and if not,
3 whether the agency plans to conduct an
4 analysis of the costs or benefits of the rule
5 during the rule making.

6 “(C) Whether the agency plans to claim an
7 exemption from the requirements of section 553
8 pursuant to section 553(b)(B).

9 “(D) The stage of the rule making as of
10 the date of submission.

11 “(E) Whether the rule is subject to review
12 under section 610.

13 “(2) For any rule for which the agency expects
14 to finalize during the following year and has issued
15 a general notice of proposed rule making—

16 “(A) an approximate schedule for com-
17 pleting action on the rule;

18 “(B) an estimate of whether the rule will
19 cost—

20 “(i) less than \$50,000,000;

21 “(ii) \$50,000,000 or more but less
22 than \$100,000,000;

23 “(iii) \$100,000,000 or more but less
24 than \$500,000,000;

1 “(iv) \$500,000,000 or more but less
2 than \$1,000,000,000;

3 “(v) \$1,000,000,000 or more but less
4 than \$5,000,000,000;

5 “(vi) \$5,000,000,000 or more but less
6 than \$10,000,000,000; or

7 “(vii) \$10,000,000,000 or more; and

8 “(C) any estimate of the economic effects
9 of the rule, including any estimate of the net ef-
10 fect that the rule will have on the number of
11 jobs in the United States, that was considered
12 in drafting the rule. If such estimate is not
13 available, a statement affirming that no infor-
14 mation on the economic effects, including the
15 effect on the number of jobs, of the rule has
16 been considered.

17 **“§ 652. Office of Information and Regulatory Affairs**
18 **Publications**

19 “(a) AGENCY-SPECIFIC INFORMATION PUBLISHED
20 MONTHLY.—Not later than 30 days after the submission
21 of information pursuant to section 651, the Administrator
22 shall make such information publicly available on the
23 Internet.

24 “(b) CUMULATIVE ASSESSMENT OF AGENCY RULE
25 MAKING PUBLISHED ANNUALLY.—

1 “(1) PUBLICATION IN THE FEDERAL REG-
2 ISTER.—Not later than October 1 of each year, the
3 Administrator shall publish in the Federal Register,
4 for the previous year the following:

5 “(A) The information that the Adminis-
6 trator received from the head of each agency
7 under section 651.

8 “(B) The number of rules and a list of
9 each such rule—

10 “(i) that was proposed by each agen-
11 cy, including, for each such rule, an indica-
12 tion of whether the issuing agency con-
13 ducted an analysis of the costs or benefits
14 of the rule; and

15 “(ii) that was finalized by each agen-
16 cy, including for each such rule an indica-
17 tion of whether—

18 “(I) the issuing agency conducted
19 an analysis of the costs or benefits of
20 the rule;

21 “(II) the agency claimed an ex-
22 emption from the procedures under
23 section 553 pursuant to section
24 553(b)(B); and

1 “(III) the rule was issued pursu-
2 ant to a statutory mandate or the rule
3 making is committed to agency discre-
4 tion by law.

5 “(C) The number of agency actions and a
6 list of each such action taken by each agency
7 that—

8 “(i) repealed a rule;

9 “(ii) reduced the scope of a rule;

10 “(iii) reduced the cost of a rule; or

11 “(iv) accelerated the expiration date
12 of a rule.

13 “(D) The total cost (without reducing the
14 cost by any offsetting benefits) of all rules pro-
15 posed or finalized, and the number of rules for
16 which an estimate of the cost of the rule was
17 not available.

18 “(2) PUBLICATION ON THE INTERNET.—Not
19 later than October 1 of each year, the Administrator
20 shall make publicly available on the Internet the fol-
21 lowing:

22 “(A) The analysis of the costs or benefits,
23 if conducted, for each proposed rule or final
24 rule issued by an agency for the previous year.

1 “(B) The docket number and regulation
2 identifier number for each proposed or final
3 rule issued by an agency for the previous year.

4 “(C) The number of rules and a list of
5 each such rule reviewed by the Director of the
6 Office of Management and Budget for the pre-
7 vious year, and the authority under which each
8 such review was conducted.

9 “(D) The number of rules and a list of
10 each such rule for which the head of an agency
11 completed a review under section 610 for the
12 previous year.

13 “(E) The number of rules and a list of
14 each such rule submitted to the Comptroller
15 General under section 801.

16 “(F) The number of rules and a list of
17 each such rule for which a resolution of dis-
18 approval was introduced in either the House of
19 Representatives or the Senate under section
20 802.

21 **“§ 653. Requirement for rules to appear in agency-**
22 **specific monthly publication**

23 “(a) IN GENERAL.—Subject to subsection (b), a rule
24 may not take effect until the information required to be
25 made publicly available on the Internet regarding such

1 rule pursuant to section 652(a) has been so available for
2 not less than 6 months.

3 “(b) EXCEPTIONS.—The requirement of subsection
4 (a) shall not apply in the case of a rule—

5 “(1) for which the agency issuing the rule
6 claims an exception under section 553(b)(B); or

7 “(2) which the President determines by Execu-
8 tive order should take effect because the rule is—

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

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

13 “(C) necessary for national security; or

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

16 **“§ 654. Definitions**

17 “In this chapter, the terms ‘agency’, ‘agency action’,
18 ‘rule’, and ‘rule making’ have the meanings given those
19 terms in section 551.”.

20 (b) TECHNICAL AND CONFORMING AMENDMENT.—

21 The table of chapters for part I of title 5, United States
22 Code, is amended by inserting after the item relating to
23 chapter 5, the following:

“6. The Analysis of Regulatory Functions	601
“6A. Office of Information and Regulatory Affairs Publication of In- formation Relating to Rules	651”.

24 (c) EFFECTIVE DATES.—

1 (1) AGENCY MONTHLY SUBMISSION TO THE OF-
2 FICE OF INFORMATION AND REGULATORY AF-
3 FAIRS.—The first submission required pursuant to
4 section 651 of title 5, United States Code, as added
5 by subsection (a), shall be submitted not later than
6 30 days after the date of the enactment of this title,
7 and monthly thereafter.

8 (2) CUMULATIVE ASSESSMENT OF AGENCY
9 RULE MAKING.—

10 (A) IN GENERAL.—Subsection (b) of sec-
11 tion 652 of title 5, United States Code, as
12 added by subsection (a), shall take effect on the
13 date that is 60 days after the date of the enact-
14 ment of this title.

15 (B) DEADLINE.—The first requirement to
16 publish or make available, as the case may be,
17 under subsection (b) of section 652 of title 5,
18 United States Code, as added by subsection (a),
19 shall be the first October 1 after the effective
20 date of such subsection.

21 (C) FIRST PUBLICATION.—The require-
22 ment under section 652(b)(2)(A) of title 5,
23 United States Code, as added by subsection (a),
24 shall include for the first publication, any anal-
25 ysis of the costs or benefits conducted for a

1 proposed or final rule, for the 10 years before
2 the date of the enactment of this title.

3 (3) REQUIREMENT FOR RULES TO APPEAR IN
4 AGENCY-SPECIFIC MONTHLY PUBLICATION.—Section
5 653 of title 5, United States Code, as added by sub-
6 section (a), shall take effect on the date that is 8
7 months after the date of the enactment of this title.

8 **TITLE II—REGULATORY**
9 **ACCOUNTABILITY ACT**

10 **SEC. 201. SHORT TITLE.**

11 This title may be cited as the “Regulatory Account-
12 ability Act of 2014”.

13 **SEC. 202. DEFINITIONS.**

14 Section 551 of title 5, United States Code, is amend-
15 ed—

16 (1) in paragraph (13), by striking “and” at the
17 end;

18 (2) in paragraph (14), by striking the period at
19 the end and inserting a semicolon; and

20 (3) by adding at the end the following:

21 “(15) ‘major rule’ means any rule that the Ad-
22 ministrator of the Office of Information and Regu-
23 latory Affairs determines is likely to impose—

1 “(A) an annual cost on the economy of
2 \$100,000,000 or more, adjusted annually for
3 inflation;

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

8 “(C) significant adverse effects on competi-
9 tion, employment, investment, productivity, in-
10 novation, or on the ability of United States-
11 based enterprises to compete with foreign-based
12 enterprises in domestic and export markets; or

13 “(D) significant impacts on multiple sec-
14 tors of the economy;

15 “(16) ‘high-impact rule’ means any rule that
16 the Administrator of the Office of Information and
17 Regulatory Affairs determines is likely to impose an
18 annual cost on the economy of \$1,000,000,000 or
19 more, adjusted annually for inflation;

20 “(17) ‘negative-impact on jobs and wages rule’
21 means any rule that the agency that made the rule
22 or the Administrator of the Office of Information
23 and Regulatory Affairs determines is likely to—

24 “(A) in one or more sectors of the economy
25 that has a 6-digit code under the North Amer-

1 ican Industry Classification System, reduce em-
2 ployment not related to new regulatory compli-
3 ance by 1 percent or more annually during the
4 1-year, 5-year, or 10-year period after imple-
5 mentation;

6 “(B) in one or more sectors of the econ-
7 omy that has a 6-digit code under the North
8 American Industry Classification System, re-
9 duce average weekly wages for employment not
10 related to new regulatory compliance by 1 per-
11 cent or more annually during the 1-year, 5-
12 year, or 10-year period after implementation;

13 “(C) in any industry area (as such term is
14 defined in the Current Population Survey con-
15 ducted by the Bureau of Labor Statistics) in
16 which the most recent annual unemployment
17 rate for the industry area is greater than 5 per-
18 cent, as determined by the Bureau of Labor
19 Statistics in the Current Population Survey, re-
20 duce employment not related to new regulatory
21 compliance during the first year after imple-
22 mentation; or

23 “(D) in any industry area in which the Bu-
24 reau of Labor Statistics projects in the Occupa-
25 tional Employment Statistics program that the

1 employment level will decrease by 1 percent or
2 more, further reduce employment not related to
3 new regulatory compliance during the first year
4 after implementation;

5 “(18) ‘guidance’ means an agency statement of
6 general applicability and future effect, other than a
7 regulatory action, that sets forth a policy on a statu-
8 tory, regulatory or technical issue or an interpreta-
9 tion of a statutory or regulatory issue;

10 “(19) ‘major guidance’ means guidance that the
11 Administrator of the Office of Information and Reg-
12 ulatory Affairs finds is likely to lead to—

13 “(A) an annual cost on the economy of
14 \$100,000,000 or more, adjusted annually for
15 inflation;

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

20 “(C) significant adverse effects on competi-
21 tion, employment, investment, productivity, in-
22 novation, or on the ability of United States-
23 based enterprises to compete with foreign-based
24 enterprises in domestic and export markets; or

1 “(D) significant impacts on multiple sec-
2 tors of the economy;

3 “(20) the ‘Information Quality Act’ means sec-
4 tion 515 of Public Law 106–554, the Treasury and
5 General Government Appropriations Act for Fiscal
6 Year 2001, and guidelines issued by the Adminis-
7 trator of the Office of Information and Regulatory
8 Affairs or other agencies pursuant to the Act; and

9 “(21) the ‘Office of Information and Regulatory
10 Affairs’ means the office established under section
11 3503 of chapter 35 of title 44 and any successor to
12 that office.”.

13 **SEC. 203. RULE MAKING.**

14 (a) Section 553(a) of title 5, United States Code, is
15 amended by striking “(a) This section applies” and insert-
16 ing “(a) APPLICABILITY.—This section applies”.

17 (b) Section 553 of title 5, United States Code, is
18 amended by striking subsections (b) through (e) and in-
19 serting the following:

20 “(b) RULE MAKING CONSIDERATIONS.—In a rule
21 making, an agency shall make all preliminary and final
22 factual determinations based on evidence and consider, in
23 addition to other applicable considerations, the following:

24 “(1) The legal authority under which a rule
25 may be proposed, including whether a rule making

1 is required by statute, and if so, whether by a spe-
2 cific date, or whether the agency has discretion to
3 commence a rule making.

4 “(2) Other statutory considerations applicable
5 to whether the agency can or should propose a rule
6 or undertake other agency action.

7 “(3) The specific nature and significance of the
8 problem the agency may address with a rule (includ-
9 ing the degree and nature of risks the problem poses
10 and the priority of addressing those risks compared
11 to other matters or activities within the agency’s ju-
12 risdiction), whether the problem warrants new agen-
13 cy action, and the countervailing risks that may be
14 posed by alternatives for new agency action.

15 “(4) Whether existing rules have created or
16 contributed to the problem the agency may address
17 with a rule and whether those rules could be amend-
18 ed or rescinded to address the problem in whole or
19 part.

20 “(5) Any reasonable alternatives for a new rule
21 or other response identified by the agency or inter-
22 ested persons, including not only responses that
23 mandate particular conduct or manners of compli-
24 ance, but also—

1 “(A) the alternative of no Federal re-
2 sponse;

3 “(B) amending or rescinding existing
4 rules;

5 “(C) potential regional, State, local, or
6 tribal regulatory action or other responses that
7 could be taken in lieu of agency action; and

8 “(D) potential responses that—

9 “(i) specify performance objectives
10 rather than conduct or manners of compli-
11 ance;

12 “(ii) establish economic incentives to
13 encourage desired behavior;

14 “(iii) provide information upon which
15 choices can be made by the public; or

16 “(iv) incorporate other innovative al-
17 ternatives rather than agency actions that
18 specify conduct or manners of compliance.

19 “(6) Notwithstanding any other provision of
20 law—

21 “(A) the potential costs and benefits asso-
22 ciated with potential alternative rules and other
23 responses considered under section 553(b)(5),
24 including direct, indirect, and cumulative costs
25 and benefits and estimated impacts on jobs (in-

1 including an estimate of the net gain or loss in
2 domestic jobs), wages, economic growth, innova-
3 tion, and economic competitiveness;

4 “(B) means to increase the cost-effective-
5 ness of any Federal response; and

6 “(C) incentives for innovation, consistency,
7 predictability, lower costs of enforcement and
8 compliance (to government entities, regulated
9 entities, and the public), and flexibility.

10 “(c) ADVANCE NOTICE OF PROPOSED RULE MAKING
11 FOR MAJOR RULES, HIGH-IMPACT RULES, NEGATIVE-IM-
12 PACT ON JOBS AND WAGES RULES, AND RULES INVOLV-
13 ING NOVEL LEGAL OR POLICY ISSUES.—In the case of
14 a rule making for a major rule, a high-impact rule, a nega-
15 tive-impact on jobs and wages rule, or a rule that involves
16 a novel legal or policy issue arising out of statutory man-
17 dates, not later than 90 days before a notice of proposed
18 rule making is published in the Federal Register, an agen-
19 cy shall publish advance notice of proposed rule making
20 in the Federal Register. In publishing such advance notice,
21 the agency shall—

22 “(1) include a written statement identifying, at
23 a minimum—

24 “(A) the nature and significance of the
25 problem the agency may address with a rule, in-

1 including data and other evidence and informa-
2 tion on which the agency expects to rely for the
3 proposed rule;

4 “(B) the legal authority under which a rule
5 may be proposed, including whether a rule mak-
6 ing is required by statute, and if so, whether by
7 a specific date, or whether the agency has dis-
8 cretion to commence a rule making;

9 “(C) preliminary information available to
10 the agency concerning the other considerations
11 specified in subsection (b);

12 “(D) in the case of a rule that involves a
13 novel legal or policy issue arising out of statu-
14 tory mandates, the nature of and potential rea-
15 sons to adopt the novel legal or policy position
16 upon which the agency may base a proposed
17 rule; and

18 “(E) an achievable objective for the rule
19 and metrics by which the agency will measure
20 progress toward that objective;

21 “(2) solicit written data, views or argument
22 from interested persons concerning the information
23 and issues addressed in the advance notice; and

1 “(3) provide for a period of not fewer than 60
2 days for interested persons to submit such written
3 data, views, or argument to the agency.

4 “(d) NOTICES OF PROPOSED RULE MAKING; DETER-
5 MINATIONS OF OTHER AGENCY COURSE.—(1) Before it
6 determines to propose a rule, and following completion of
7 procedures under subsection (c), if applicable, the agency
8 shall consult with the Administrator of the Office of Infor-
9 mation and Regulatory Affairs. If the agency thereafter
10 determines to propose a rule, the agency shall publish a
11 notice of proposed rule making, which shall include—

12 “(A) a statement of the time, place, and nature
13 of public rule making proceedings;

14 “(B) reference to the legal authority under
15 which the rule is proposed;

16 “(C) the terms of the proposed rule;

17 “(D) a description of information known to the
18 agency on the subject and issues of the proposed
19 rule, including but not limited to—

20 “(i) a summary of information known to
21 the agency concerning the considerations speci-
22 fied in subsection (b);

23 “(ii) a summary of additional information
24 the agency provided to and obtained from inter-
25 ested persons under subsection (c);

1 “(iii) a summary of any preliminary risk
2 assessment or regulatory impact analysis per-
3 formed by the agency; and

4 “(iv) information specifically identifying all
5 data, studies, models, and other evidence or in-
6 formation considered or used by the agency in
7 connection with its determination to propose
8 the rule;

9 “(E)(i) a reasoned preliminary determination of
10 need for the rule based on the information described
11 under subparagraph (D);

12 “(ii) an additional statement of whether a rule
13 is required by statute; and

14 “(iii) an achievable objective for the rule and
15 metrics by which the agency will measure progress
16 toward that objective;

17 “(F) a reasoned preliminary determination that
18 the benefits of the proposed rule meet the relevant
19 statutory objectives and justify the costs of the pro-
20 posed rule (including all costs to be considered under
21 subsection (b)(6)), based on the information de-
22 scribed under subparagraph (D);

23 “(G) a discussion of—

1 “(i) the alternatives to the proposed rule,
2 and other alternative responses, considered by
3 the agency under subsection (b);

4 “(ii) the costs and benefits of those alter-
5 natives (including all costs to be considered
6 under subsection (b)(6));

7 “(iii) whether those alternatives meet rel-
8 evant statutory objectives; and

9 “(iv) why the agency did not propose any
10 of those alternatives; and

11 “(H)(i) a statement of whether existing rules
12 have created or contributed to the problem the agen-
13 cy seeks to address with the proposed rule; and

14 “(ii) if so, whether or not the agency proposes
15 to amend or rescind any such rules, and why.

16 All information provided to or considered by the agency,
17 and steps to obtain information by the agency, in connec-
18 tion with its determination to propose the rule, including
19 any preliminary risk assessment or regulatory impact
20 analysis prepared by the agency and all other information
21 prepared or described by the agency under subparagraph
22 (D) and, at the discretion of the President or the Adminis-
23 trator of the Office of Information and Regulatory Affairs,
24 information provided by that Office in consultations with
25 the agency, shall be placed in the docket for the proposed

1 rule and made accessible to the public by electronic means
2 and otherwise for the public's use when the notice of pro-
3 posed rule making is published.

4 “(2)(A) If the agency undertakes procedures under
5 subsection (c) and determines thereafter not to propose
6 a rule, the agency shall, following consultation with the
7 Office of Information and Regulatory Affairs, publish a
8 notice of determination of other agency course. A notice
9 of determination of other agency course shall include in-
10 formation required by paragraph (1)(D) to be included in
11 a notice of proposed rule making and a description of the
12 alternative response the agency determined to adopt.

13 “(B) If in its determination of other agency course
14 the agency makes a determination to amend or rescind
15 an existing rule, the agency need not undertake additional
16 proceedings under subsection (c) before it publishes a no-
17 tice of proposed rule making to amend or rescind the exist-
18 ing rule.

19 All information provided to or considered by the agency,
20 and steps to obtain information by the agency, in connec-
21 tion with its determination of other agency course, includ-
22 ing but not limited to any preliminary risk assessment or
23 regulatory impact analysis prepared by the agency and all
24 other information that would be required to be prepared
25 or described by the agency under paragraph (1)(D) if the

1 agency had determined to publish a notice of proposed rule
2 making and, at the discretion of the President or the Ad-
3 ministrator of the Office of Information and Regulatory
4 Affairs, information provided by that Office in consulta-
5 tions with the agency, shall be placed in the docket for
6 the determination and made accessible to the public by
7 electronic means and otherwise for the public's use when
8 the notice of determination is published.

9 “(3) After notice of proposed rule making required
10 by this section, the agency shall provide interested persons
11 an opportunity to participate in the rule making through
12 submission of written data, views, or arguments with or
13 without opportunity for oral presentation, except that—

14 “(A) if a hearing is required under paragraph
15 (4)(B) or subsection (e), opportunity for oral presen-
16 tation shall be provided pursuant to that require-
17 ment; or

18 “(B) when other than under subsection (e) of
19 this section rules are required by statute or at the
20 discretion of the agency to be made on the record
21 after opportunity for an agency hearing, sections
22 556 and 557 shall apply, and paragraph (4), the re-
23 quirements of subsection (e) to receive comment out-
24 side of the procedures of sections 556 and 557, and

1 the petition procedures of subsection (e)(6) shall not
2 apply.

3 The agency shall provide not fewer than 60 days for inter-
4 ested persons to submit written data, views, or argument
5 (or 120 days in the case of a proposed major or high-
6 impact rule).

7 “(4)(A) Within 30 days of publication of notice of
8 proposed rule making, a member of the public may peti-
9 tion for a hearing in accordance with section 556 to deter-
10 mine whether any evidence or other information upon
11 which the agency bases the proposed rule fails to comply
12 with the Information Quality Act.

13 “(B)(i) The agency may, upon review of the petition,
14 determine without further process to exclude from the rule
15 making the evidence or other information that is the sub-
16 ject of the petition and, if appropriate, withdraw the pro-
17 posed rule. The agency shall promptly publish any such
18 determination.

19 “(ii) If the agency does not resolve the petition under
20 the procedures of clause (i), it shall grant any such peti-
21 tion that presents a prima facie case that evidence or other
22 information upon which the agency bases the proposed
23 rule fails to comply with the Information Quality Act, hold
24 the requested hearing not later than 30 days after receipt
25 of the petition, provide a reasonable opportunity for cross-

1 examination at the hearing, and decide the issues pre-
2 sented by the petition not later than 60 days after receipt
3 of the petition. The agency may deny any petition that
4 it determines does not present such a prima facie case.

5 “(C) There shall be no judicial review of the agency’s
6 disposition of issues considered and decided or determined
7 under subparagraph (B)(ii) until judicial review of the
8 agency’s final action. There shall be no judicial review of
9 an agency’s determination to withdraw a proposed rule
10 under subparagraph (B)(i) on the basis of the petition.

11 “(D) Failure to petition for a hearing under this
12 paragraph shall not preclude judicial review of any claim
13 based on the Information Quality Act under chapter 7 of
14 this title.

15 “(e) HEARINGS FOR HIGH-IMPACT RULES.—Fol-
16 lowing notice of a proposed rule making, receipt of com-
17 ments on the proposed rule, and any hearing held under
18 subsection (d)(4), and before adoption of any high-impact
19 rule, the agency shall hold a hearing in accordance with
20 sections 556 and 557, unless such hearing is waived by
21 all participants in the rule making other than the agency.
22 The agency shall provide a reasonable opportunity for
23 cross-examination at such hearing. The hearing shall be
24 limited to the following issues of fact, except that partici-

1 pants at the hearing other than the agency may waive de-
2 termination of any such issue:

3 “(1) Whether the agency’s asserted factual
4 predicate for the rule is supported by the evidence.

5 “(2) Whether there is an alternative to the pro-
6 posed rule that would achieve the relevant statutory
7 objectives at a lower cost (including all costs to be
8 considered under subsection (b)(6)) than the pro-
9 posed rule.

10 “(3) If there is more than one alternative to the
11 proposed rule that would achieve the relevant statu-
12 tory objectives at a lower cost than the proposed
13 rule, which alternative would achieve the relevant
14 statutory objectives at the lowest cost.

15 “(4) Whether, if the agency proposes to adopt
16 a rule that is more costly than the least costly alter-
17 native that would achieve the relevant statutory ob-
18 jectives (including all costs to be considered under
19 subsection (b)(6)), the additional benefits of the
20 more costly rule exceed the additional costs of the
21 more costly rule.

22 “(5) Whether the evidence and other informa-
23 tion upon which the agency bases the proposed rule
24 meets the requirements of the Information Quality
25 Act.

1 “(6) Upon petition by an interested person who
2 has participated in the rule making, other issues rel-
3 evant to the rule making, unless the agency deter-
4 mines that consideration of the issues at the hearing
5 would not advance consideration of the rule or
6 would, in light of the nature of the need for agency
7 action, unreasonably delay completion of the rule
8 making. An agency shall grant or deny a petition
9 under this paragraph within 30 days of its receipt
10 of the petition.

11 No later than 45 days before any hearing held under this
12 subsection or sections 556 and 557, the agency shall pub-
13 lish in the Federal Register a notice specifying the pro-
14 posed rule to be considered at such hearing, the issues
15 to be considered at the hearing, and the time and place
16 for such hearing, except that such notice may be issued
17 not later than 15 days before a hearing held under sub-
18 section (d)(4)(B).

19 “(f) FINAL RULES.—(1) The agency shall adopt a
20 rule only following consultation with the Administrator of
21 the Office of Information and Regulatory Affairs to facili-
22 tate compliance with applicable rule making requirements.

23 “(2) The agency shall adopt a rule only on the basis
24 of the best reasonably obtainable scientific, technical, eco-

1 nomic, and other evidence and information concerning the
2 need for, consequences of, and alternatives to the rule.

3 “(3)(A) Except as provided in subparagraph (B), the
4 agency shall adopt the least costly rule considered during
5 the rule making (including all costs to be considered under
6 subsection (b)(6)) that meets relevant statutory objectives.

7 “(B) The agency may adopt a rule that is more costly
8 than the least costly alternative that would achieve the rel-
9 evant statutory objectives only if the additional benefits
10 of the more costly rule justify its additional costs and only
11 if the agency explains its reason for doing so based on
12 interests of public health, safety or welfare that are clearly
13 within the scope of the statutory provision authorizing the
14 rule.

15 “(4) When it adopts a final rule, the agency shall
16 publish a notice of final rule making. The notice shall in-
17 clude—

18 “(A) a concise, general statement of the rule’s
19 basis and purpose;

20 “(B) the agency’s reasoned final determination
21 of need for a rule to address the problem the agency
22 seeks to address with the rule, including a statement
23 of whether a rule is required by statute and a sum-
24 mary of any final risk assessment or regulatory im-
25 pact analysis prepared by the agency;

1 “(C) the agency’s reasoned final determination
2 that the benefits of the rule meet the relevant statu-
3 tory objectives and justify the rule’s costs (including
4 all costs to be considered under subsection (b)(6));

5 “(D) the agency’s reasoned final determination
6 not to adopt any of the alternatives to the proposed
7 rule considered by the agency during the rule mak-
8 ing, including—

9 “(i) the agency’s reasoned final determina-
10 tion that no alternative considered achieved the
11 relevant statutory objectives with lower costs
12 (including all costs to be considered under sub-
13 section (b)(6)) than the rule; or

14 “(ii) the agency’s reasoned determination
15 that its adoption of a more costly rule complies
16 with subsection (f)(3)(B);

17 “(E) the agency’s reasoned final determina-
18 tion—

19 “(i) that existing rules have not created or
20 contributed to the problem the agency seeks to
21 address with the rule; or

22 “(ii) that existing rules have created or
23 contributed to the problem the agency seeks to
24 address with the rule, and, if so—

1 “(I) why amendment or rescission of
2 such existing rules is not alone sufficient
3 to respond to the problem; and

4 “(II) whether and how the agency in-
5 tends to amend or rescind the existing rule
6 separate from adoption of the rule;

7 “(F) the agency’s reasoned final determination
8 that the evidence and other information upon which
9 the agency bases the rule complies with the Informa-
10 tion Quality Act;

11 “(G) the agency’s reasoned final determination
12 that the rule meets the objectives that the agency
13 identified in subsection (d)(1)(E)(iii) or that other
14 objectives are more appropriate in light of the full
15 administrative record and the rule meets those ob-
16 jectives;

17 “(H) the agency’s reasoned final determination
18 that it did not deviate from the metrics the agency
19 included in subsection (d)(1)(E)(iii) or that other
20 metrics are more appropriate in light of the full ad-
21 ministrative record and the agency did not deviate
22 from those metrics;

23 “(I)(i) for any major rule, high-impact rule, or
24 negative-impact on jobs and wages rule, the agency’s
25 plan for review of the rule no less than every ten

1 years to determine whether, based upon evidence,
2 there remains a need for the rule, whether the rule
3 is in fact achieving statutory objectives, whether the
4 rule's benefits continue to justify its costs, and
5 whether the rule can be modified or rescinded to re-
6 duce costs while continuing to achieve statutory ob-
7 jectives; and

8 “(ii) review of a rule under a plan required by
9 clause (i) of this subparagraph shall take into ac-
10 count the factors and criteria set forth in sub-
11 sections (b) through (f) of section 553 of this title;
12 and

13 “(J) for any negative-impact on jobs and wages
14 rule, a statement that the head of the agency that
15 made the rule approved the rule knowing about the
16 findings and determination of the agency or the Ad-
17 ministrator of the Office of Information and Regu-
18 latory Affairs that qualified the rule as a negative
19 impact on jobs and wages rule.

20 All information considered by the agency in connection
21 with its adoption of the rule, and, at the discretion of the
22 President or the Administrator of the Office of Informa-
23 tion and Regulatory Affairs, information provided by that
24 Office in consultations with the agency, shall be placed

1 in the docket for the rule and made accessible to the public
2 for the public's use no later than when the rule is adopted.

3 “(g) EXCEPTIONS FROM NOTICE AND HEARING RE-
4 QUIREMENTS.—(1) Except when notice or hearing is re-
5 quired by statute, the following do not apply to interpre-
6 tive rules, general statements of policy, or rules of agency
7 organization, procedure, or practice:

8 “(A) Subsections (c) through (e).

9 “(B) Paragraphs (1) through (3) of subsection
10 (f).

11 “(C) Subparagraphs (B) through (H) of sub-
12 section (f)(4).

13 “(2)(A) When the agency for good cause, based upon
14 evidence, finds (and incorporates the finding and a brief
15 statement of reasons therefor in the rules issued) that
16 compliance with subsection (c), (d), or (e) or requirements
17 to render final determinations under subsection (f) of this
18 section before the issuance of an interim rule is impracti-
19 cable or contrary to the public interest, including interests
20 of national security, such subsections or requirements to
21 render final determinations shall not apply to the agency's
22 adoption of an interim rule.

23 “(B) If, following compliance with subparagraph (A)
24 of this paragraph, the agency adopts an interim rule, it
25 shall commence proceedings that comply fully with sub-

1 sections (d) through (f) of this section immediately upon
2 publication of the interim rule, shall treat the publication
3 of the interim rule as publication of a notice of proposed
4 rule making and shall not be required to issue supple-
5 mental notice other than to complete full compliance with
6 subsection (d). No less than 270 days from publication
7 of the interim rule (or 18 months in the case of a major
8 rule or high-impact rule), the agency shall complete rule
9 making under subsections (d) through (f) of this sub-
10 section and take final action to adopt a final rule or re-
11 scind the interim rule. If the agency fails to take timely
12 final action, the interim rule will cease to have the effect
13 of law.

14 “(C) Other than in cases involving interests of na-
15 tional security, upon the agency’s publication of an interim
16 rule without compliance with subsection (c), (d), or (e) or
17 requirements to render final determinations under sub-
18 section (f) of this section, an interested party may seek
19 immediate judicial review under chapter 7 of this title of
20 the agency’s determination to adopt such interim rule. The
21 record on such review shall include all documents and in-
22 formation considered by the agency and any additional in-
23 formation presented by a party that the court determines
24 necessary to consider to assure justice.

1 “(3) When the agency for good cause finds (and in-
2 corporates the finding and a brief statement of reasons
3 therefor in the rules issued) that notice and public proce-
4 dure thereon are unnecessary, including because agency
5 rule making is undertaken only to correct a de minimis
6 technical or clerical error in a previously issued rule or
7 for other noncontroversial purposes, the agency may pub-
8 lish a rule without compliance with subsection (c), (d), (e),
9 or (f)(1)–(3) and (f)(4)(B)–(F). If the agency receives sig-
10 nificant adverse comment within 60 days after publication
11 of the rule, it shall treat the notice of the rule as a notice
12 of proposed rule making and complete rule making in com-
13 pliance with subsections (d) and (f).

14 “(h) ADDITIONAL REQUIREMENTS FOR HEARINGS.—
15 When a hearing is required under subsection (e) or is oth-
16 erwise required by statute or at the agency’s discretion
17 before adoption of a rule, the agency shall comply with
18 the requirements of sections 556 and 557 in addition to
19 the requirements of subsection (f) in adopting the rule and
20 in providing notice of the rule’s adoption.

21 “(i) DATE OF PUBLICATION OF RULE.—The required
22 publication or service of a substantive final or interim rule
23 shall be made not less than 30 days before the effective
24 date of the rule, except—

1 “(1) a substantive rule which grants or recog-
2 nizes an exemption or relieves a restriction;

3 “(2) interpretive rules and statements of policy;
4 or

5 “(3) as otherwise provided by the agency for
6 good cause found and published with the rule.

7 “(j) RIGHT TO PETITION.—Each agency shall give
8 an interested person the right to petition for the issuance,
9 amendment, or repeal of a rule.

10 “(k) RULE MAKING GUIDELINES.—(1)(A) The Ad-
11 ministrator of the Office of Information and Regulatory
12 Affairs shall establish guidelines for the assessment, in-
13 cluding quantitative and qualitative assessment, of the
14 costs and benefits of proposed and final rules and other
15 economic issues or issues related to risk that are relevant
16 to rule making under this title. The rigor of cost-benefit
17 analysis required by such guidelines shall be commensu-
18 rate, in the Administrator’s determination, with the eco-
19 nomic impact of the rule.

20 “(B) To ensure that agencies use the best available
21 techniques to quantify and evaluate anticipated present
22 and future benefits, costs, other economic issues, and risks
23 as accurately as possible, the Administrator of the Office
24 of Information and Regulatory Affairs shall regularly up-

1 date guidelines established under paragraph (1)(A) of this
2 subsection.

3 “(2) The Administrator of the Office of Information
4 and Regulatory Affairs shall also issue guidelines to pro-
5 mote coordination, simplification and harmonization of
6 agency rules during the rule making process and other-
7 wise. Such guidelines shall assure that each agency avoids
8 regulations that are inconsistent or incompatible with, or
9 duplicative of, its other regulations and those of other
10 Federal agencies and drafts its regulations to be simple
11 and easy to understand, with the goal of minimizing the
12 potential for uncertainty and litigation arising from such
13 uncertainty.

14 “(3) To ensure consistency in Federal rule making,
15 the Administrator of the Office of Information and Regu-
16 latory Affairs shall—

17 “(A) issue guidelines and otherwise take action
18 to ensure that rule makings conducted in whole or
19 in part under procedures specified in provisions of
20 law other than those of subchapter II of this title
21 conform to the fullest extent allowed by law with the
22 procedures set forth in section 553 of this title; and

23 “(B) issue guidelines for the conduct of hear-
24 ings under subsections 553(d)(4) and 553(e) of this
25 section, including to assure a reasonable opportunity

1 for cross-examination. Each agency shall adopt regu-
2 lations for the conduct of hearings consistent with
3 the guidelines issued under this subparagraph.

4 “(4) The Administrator of the Office of Information
5 and Regulatory Affairs shall issue guidelines pursuant to
6 the Information Quality Act to apply in rule making pro-
7 ceedings under sections 553, 556, and 557 of this title.
8 In all cases, such guidelines, and the Administrator’s spe-
9 cific determinations regarding agency compliance with
10 such guidelines, shall be entitled to judicial deference.

11 “(l) INCLUSION IN THE RECORD OF CERTAIN DOCU-
12 MENTS AND INFORMATION.—The agency shall include in
13 the record for a rule making, and shall make available by
14 electronic means and otherwise, all documents and infor-
15 mation prepared or considered by the agency during the
16 proceeding, including, at the discretion of the President
17 or the Administrator of the Office of Information and Reg-
18 ulatory Affairs, documents and information communicated
19 by that Office during consultation with the Agency.

20 “(m) MONETARY POLICY EXEMPTION.—Nothing in
21 subsection (b)(6), subparagraphs (F) and (G) of sub-
22 section (d)(1), subsection (e), subsection (f)(3), and sub-
23 paragraphs (C) and (D) of subsection (f)(5) shall apply
24 to rule makings that concern monetary policy proposed or

1 implemented by the Board of Governors of the Federal
2 Reserve System or the Federal Open Market Committee.”.

3 **SEC. 204. AGENCY GUIDANCE; PROCEDURES TO ISSUE**
4 **MAJOR GUIDANCE; PRESIDENTIAL AUTHOR-**
5 **ITY TO ISSUE GUIDELINES FOR ISSUANCE OF**
6 **GUIDANCE.**

7 (a) IN GENERAL.—Chapter 5 of title 5, United
8 States Code, is amended by inserting after section 553 the
9 following new section:

10 **“§ 553a. Agency guidance; procedures to issue major**
11 **guidance; authority to issue guidelines**
12 **for issuance of guidance**

13 “(a) Before issuing any major guidance, or guidance
14 that involves a novel legal or policy issue arising out of
15 statutory mandates, an agency shall—

16 “(1) make and document a reasoned determina-
17 tion that—

18 “(A) assures that such guidance is under-
19 standable and complies with relevant statutory
20 objectives and regulatory provisions (including
21 any statutory deadlines for agency action);

22 “(B) summarizes the evidence and data on
23 which the agency will base the guidance;

24 “(C) identifies the costs and benefits (in-
25 cluding all costs to be considered during a rule

1 making under section 553(b) of this title) of
2 conduct conforming to such guidance and
3 assures that such benefits justify such costs;
4 and

5 “(D) describes alternatives to such guid-
6 ance and their costs and benefits (including all
7 costs to be considered during a rule making
8 under section 553(b) of this title) and explains
9 why the agency rejected those alternatives; and

10 “(2) confer with the Administrator of the Office
11 of Information and Regulatory Affairs on the
12 issuance of such guidance to assure that the guid-
13 ance is reasonable, understandable, consistent with
14 relevant statutory and regulatory provisions and re-
15 quirements or practices of other agencies, does not
16 produce costs that are unjustified by the guidance’s
17 benefits, and is otherwise appropriate.

18 Upon issuing major guidance, or guidance that involves
19 a novel legal or policy issue arising out of statutory man-
20 dates, the agency shall publish the documentation required
21 by subparagraph (1) by electronic means and otherwise.

22 “(b) Agency guidance—

23 “(1) is not legally binding and may not be re-
24 lied upon by an agency as legal grounds for agency
25 action;

1 “(2) shall state in a plain, prominent and per-
2 manent manner that it is not legally binding; and

3 “(3) shall, at the time it is issued or upon re-
4 quest, be made available by the issuing agency to in-
5 terested persons and the public by electronic means
6 and otherwise.

7 Agencies shall avoid the issuance of guidance that is in-
8 consistent or incompatible with, or duplicative of, the
9 agency’s governing statutes or regulations, with the goal
10 of minimizing the potential for uncertainty and litigation
11 arising from such uncertainty.

12 “(c) The Administrator of the Office of Information
13 and Regulatory Affairs shall have authority to issue guide-
14 lines for use by the agencies in the issuance of major guid-
15 ance and other guidance. Such guidelines shall assure that
16 each agency avoids issuing guidance documents that are
17 inconsistent or incompatible with, or duplicative of, the
18 law, its other regulations, or the regulations of other Fed-
19 eral agencies and drafts its guidance documents to be sim-
20 ple and easy to understand, with the goal of minimizing
21 the potential for uncertainty and litigation arising from
22 such uncertainty.”.

23 (b) CLERICAL AMENDMENT.—The table of sections
24 for chapter 5 of title 5, United States Code, is amended

1 by inserting after the item relating to section 553 the fol-
 2 lowing new item:

“553a. Agency guidance; procedures to issue major guidance; authority to issue
 guidelines for issuance of guidance.”.

3 **SEC. 205. HEARINGS; PRESIDING EMPLOYEES; POWERS AND**
 4 **DUTIES; BURDEN OF PROOF; EVIDENCE;**
 5 **RECORD AS BASIS OF DECISION.**

6 Section 556 of title 5, United States Code, is amend-
 7 ed by striking subsection (e) and inserting the following:

8 “(e)(1) The transcript of testimony and exhibits, to-
 9 gether with all papers and requests filed in the proceeding,
 10 constitutes the exclusive record for decision in accordance
 11 with section 557 and shall be made available to the parties
 12 and the public by electronic means and, upon payment of
 13 lawfully prescribed costs, otherwise. When an agency deci-
 14 sion rests on official notice of a material fact not appear-
 15 ing in the evidence in the record, a party is entitled, on
 16 timely request, to an opportunity to show the contrary.

17 “(2) Notwithstanding paragraph (1) of this sub-
 18 section, in a proceeding held under this section pursuant
 19 to section 553(d)(4) or 553(e), the record for decision
 20 shall also include any information that is part of the
 21 record of proceedings under section 553.

22 “(f) When an agency conducts rule making under this
 23 section and section 557 directly after concluding pro-
 24 ceedings upon an advance notice of proposed rule making

1 under section 553(c), the matters to be considered and
2 determinations to be made shall include, among other rel-
3 evant matters and determinations, the matters and deter-
4 minations described in subsections (b) and (f) of section
5 553.

6 “(g) Upon receipt of a petition for a hearing under
7 this section, the agency shall grant the petition in the case
8 of any major rule, unless the agency reasonably deter-
9 mines that a hearing would not advance consideration of
10 the rule or would, in light of the need for agency action,
11 unreasonably delay completion of the rule making. The
12 agency shall publish its decision to grant or deny the peti-
13 tion when it renders the decision, including an explanation
14 of the grounds for decision. The information contained in
15 the petition shall in all cases be included in the adminis-
16 trative record. This subsection shall not apply to rule mak-
17 ings that concern monetary policy proposed or imple-
18 mented by the Board of Governors of the Federal Reserve
19 System or the Federal Open Market Committee.”.

20 **SEC. 206. ACTIONS REVIEWABLE.**

21 Section 704 of title 5, United States Code, is amend-
22 ed—

23 (1) by striking “Agency action made” and in-
24 serting “(a) Agency action made”; and

1 (2) by adding at the end the following: “Denial
2 by an agency of a correction request or, where ad-
3 ministrative appeal is provided for, denial of an ap-
4 peal, under an administrative mechanism described
5 in subsection (b)(2)(B) of the Information Quality
6 Act, or the failure of an agency within 90 days to
7 grant or deny such request or appeal, shall be final
8 action for purposes of this section.

9 “(b) Other than in cases involving interests of na-
10 tional security, notwithstanding subsection (a) of this sec-
11 tion, upon the agency’s publication of an interim rule with-
12 out compliance with section 553(c), (d), or (e) or require-
13 ments to render final determinations under subsection (f)
14 of section 553, an interested party may seek immediate
15 judicial review under this chapter of the agency’s deter-
16 mination to adopt such rule on an interim basis. Review
17 shall be limited to whether the agency abused its discre-
18 tion to adopt the interim rule without compliance with sec-
19 tion 553(c), (d), or (e) or without rendering final deter-
20 minations under subsection (f) of section 553.”.

21 **SEC. 207. SCOPE OF REVIEW.**

22 Section 706 of title 5, United States Code is amend-
23 ed—

24 (1) by striking “To the extent necessary” and
25 inserting “(a) To the extent necessary”;

1 (2) in paragraph (2)(A) of subsection (a) (as
2 designated by paragraph (1) of this section), by in-
3 serting after “in accordance with law” the following:
4 “(including the Information Quality Act)”; and

5 (3) by adding at the end the following:

6 “(b) The court shall not defer to the agency’s—

7 “(1) interpretation of an agency rule if the
8 agency did not comply with the procedures of section
9 553 or sections 556–557 of chapter 5 of this title to
10 issue the interpretation;

11 “(2) determination of the costs and benefits or
12 other economic or risk assessment of the action, if
13 the agency failed to conform to guidelines on such
14 determinations and assessments established by the
15 Administrator of the Office of Information and Reg-
16 ulatory Affairs under section 553(k);

17 “(3) determinations made in the adoption of an
18 interim rule; or

19 “(4) guidance.

20 “(c) The court shall review agency denials of petitions
21 under section 553(e)(6) or any other petition for a hearing
22 under sections 556 and 557 for abuse of agency discre-
23 tion.”.

1 **SEC. 208. ADDED DEFINITION.**

2 Section 701(b) of title 5, United States Code, is
3 amended—

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

6 (2) in paragraph (2), by striking the period at
7 the end, and inserting “; and”; and

8 (3) by adding at the end the following:

9 “(3) ‘substantial evidence’ means such relevant
10 evidence as a reasonable mind might accept as ade-
11 quate to support a conclusion in light of the record
12 considered as a whole, taking into account whatever
13 in the record fairly detracts from the weight of the
14 evidence relied upon by the agency to support its de-
15 cision.”.

16 **SEC. 209. EFFECTIVE DATE.**

17 The amendments made by this title to—

18 (1) sections 553, 556, and 704 of title 5,
19 United States Code;

20 (2) subsection (b) of section 701 of such title;

21 (3) paragraphs (2) and (3) of section 706(b) of
22 such title; and

23 (4) subsection (c) of section 706 of such title,
24 shall not apply to any rule makings pending or completed
25 on the date of enactment of this title.

1 **TITLE III—REGULATORY FLEXI-**
2 **BILITY IMPROVEMENTS ACT**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “Regulatory Flexibility
5 Improvements Act of 2014”.

6 **SEC. 302. CLARIFICATION AND EXPANSION OF RULES COV-**
7 **ERED BY THE REGULATORY FLEXIBILITY**
8 **ACT.**

9 (a) IN GENERAL.—Paragraph (2) of section 601 of
10 title 5, United States Code, is amended to read as follows:

11 “(2) RULE.—The term ‘rule’ has the meaning
12 given such term in section 551(4) of this title, ex-
13 cept that such term does not include a rule per-
14 taining to the protection of the rights of and benefits
15 for veterans or a rule of particular (and not general)
16 applicability relating to rates, wages, corporate or fi-
17 nancial structures or reorganizations thereof, prices,
18 facilities, appliances, services, or allowances therefor
19 or to valuations, costs or accounting, or practices re-
20 lating to such rates, wages, structures, prices, appli-
21 ances, services, or allowances.”.

22 (b) INCLUSION OF RULES WITH INDIRECT EF-
23 FECTS.—Section 601 of title 5, United States Code, is
24 amended by adding at the end the following new para-
25 graph:

1 “(9) ECONOMIC IMPACT.—The term ‘economic
2 impact’ means, with respect to a proposed or final
3 rule—

4 “(A) any direct economic effect on small
5 entities of such rule; and

6 “(B) any indirect economic effect (includ-
7 ing compliance costs and effects on revenue) on
8 small entities which is reasonably foreseeable
9 and results from such rule (without regard to
10 whether small entities will be directly regulated
11 by the rule).”.

12 (c) INCLUSION OF RULES WITH BENEFICIAL EF-
13 FECTS.—

14 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
15 YSIS.—Subsection (c) of section 603 of title 5,
16 United States Code, is amended by striking the first
17 sentence and inserting “Each initial regulatory flexi-
18 bility analysis shall also contain a detailed descrip-
19 tion of alternatives to the proposed rule which mini-
20 mize any adverse significant economic impact or
21 maximize any beneficial significant economic impact
22 on small entities.”.

23 (2) FINAL REGULATORY FLEXIBILITY ANAL-
24 YSIS.—The first paragraph (6) of section 604(a) of
25 title 5, United States Code, is amended by striking

1 “minimize the significant economic impact” and in-
2 serting “minimize the adverse significant economic
3 impact or maximize the beneficial significant eco-
4 nomic impact”.

5 (d) INCLUSION OF RULES AFFECTING TRIBAL ORGA-
6 NIZATIONS.—Paragraph (5) of section 601 of title 5,
7 United States Code, is amended by inserting “and tribal
8 organizations (as defined in section 4(l) of the Indian Self-
9 Determination and Education Assistance Act (25 U.S.C.
10 450b(l))),” after “special districts,”.

11 (e) INCLUSION OF LAND MANAGEMENT PLANS AND
12 FORMAL RULEMAKING.—

13 (1) INITIAL REGULATORY FLEXIBILITY ANAL-
14 YSIS.—Subsection (a) of section 603 of title 5,
15 United States Code, is amended in the first sen-
16 tence—

17 (A) by striking “or” after “proposed
18 rule,”; and

19 (B) by inserting “or publishes a revision or
20 amendment to a land management plan,” after
21 “United States,”.

22 (2) FINAL REGULATORY FLEXIBILITY ANAL-
23 YSIS.—Subsection (a) of section 604 of title 5,
24 United States Code, is amended in the first sen-
25 tence—

1 (A) by striking “or” after “proposed rule-
2 making,”; and

3 (B) by inserting “or adopts a revision or
4 amendment to a land management plan,” after
5 “section 603(a),”.

6 (3) LAND MANAGEMENT PLAN DEFINED.—Sec-
7 tion 601 of title 5, United States Code, is amended
8 by adding at the end the following new paragraph:

9 “(10) LAND MANAGEMENT PLAN.—

10 “(A) IN GENERAL.—The term ‘land man-
11 agement plan’ means—

12 “(i) any plan developed by the Sec-
13 retary of Agriculture under section 6 of
14 the Forest and Rangeland Renewable Re-
15 sources Planning Act of 1974 (16 U.S.C.
16 1604); and

17 “(ii) any plan developed by the Sec-
18 retary of the Interior under section 202 of
19 the Federal Land Policy and Management
20 Act of 1976 (43 U.S.C. 1712).

21 “(B) REVISION.—The term ‘revision’
22 means any change to a land management plan
23 which—

24 “(i) in the case of a plan described in
25 subparagraph (A)(i), is made under section

1 6(f)(5) of the Forest and Rangeland Re-
2 newable Resources Planning Act of 1974
3 (16 U.S.C. 1604(f)(5)); or

4 “(ii) in the case of a plan described in
5 subparagraph (A)(ii), is made under sec-
6 tion 1610.5–6 of title 43, Code of Federal
7 Regulations (or any successor regulation).

8 “(C) AMENDMENT.—The term ‘amend-
9 ment’ means any change to a land management
10 plan which—

11 “(i) in the case of a plan described in
12 subparagraph (A)(i), is made under section
13 6(f)(4) of the Forest and Rangeland Re-
14 newable Resources Planning Act of 1974
15 (16 U.S.C. 1604(f)(4)) and with respect to
16 which the Secretary of Agriculture pre-
17 pares a statement described in section
18 102(2)(C) of the National Environmental
19 Policy Act of 1969 (42 U.S.C.
20 4332(2)(C)); or

21 “(ii) in the case of a plan described in
22 subparagraph (A)(ii), is made under sec-
23 tion 1610.5–5 of title 43, Code of Federal
24 Regulations (or any successor regulation)
25 and with respect to which the Secretary of

1 the Interior prepares a statement described
2 in section 102(2)(C) of the National Envi-
3 ronmental Policy Act of 1969 (42 U.S.C.
4 4332(2)(C)).”.

5 (f) INCLUSION OF CERTAIN INTERPRETIVE RULES
6 INVOLVING THE INTERNAL REVENUE LAWS.—

7 (1) IN GENERAL.—Subsection (a) of section
8 603 of title 5, United States Code, is amended by
9 striking the period at the end and inserting “or a
10 recordkeeping requirement, and without regard to
11 whether such requirement is imposed by statute or
12 regulation.”.

13 (2) COLLECTION OF INFORMATION.—Paragraph
14 (7) of section 601 of title 5, United States Code, is
15 amended to read as follows:

16 “(7) COLLECTION OF INFORMATION.—The term
17 ‘collection of information’ has the meaning given
18 such term in section 3502(3) of title 44.”.

19 (3) RECORDKEEPING REQUIREMENT.—Para-
20 graph (8) of section 601 of title 5, United States
21 Code, is amended to read as follows:

22 “(8) RECORDKEEPING REQUIREMENT.—The
23 term ‘recordkeeping requirement’ has the meaning
24 given such term in section 3502(13) of title 44.”.

1 (g) DEFINITION OF SMALL ORGANIZATION.—Para-
2 graph (4) of section 601 of title 5, United States Code,
3 is amended to read as follows:

4 “(4) SMALL ORGANIZATION.—

5 “(A) IN GENERAL.—The term ‘small orga-
6 nization’ means any not-for-profit enterprise
7 which, as of the issuance of the notice of pro-
8 posed rulemaking—

9 “(i) in the case of an enterprise which
10 is described by a classification code of the
11 North American Industrial Classification
12 System, does not exceed the size standard
13 established by the Administrator of the
14 Small Business Administration pursuant to
15 section 3 of the Small Business Act (15
16 U.S.C. 632) for small business concerns
17 described by such classification code; and

18 “(ii) in the case of any other enter-
19 prise, has a net worth that does not exceed
20 \$7,000,000 and has not more than 500
21 employees.

22 “(B) LOCAL LABOR ORGANIZATIONS.—In
23 the case of any local labor organization, sub-
24 paragraph (A) shall be applied without regard

1 to any national or international organization of
2 which such local labor organization is a part.

3 “(C) AGENCY DEFINITIONS.—Subpara-
4 graphs (A) and (B) shall not apply to the ex-
5 tent that an agency, after consultation with the
6 Office of Advocacy of the Small Business Ad-
7 ministration and after opportunity for public
8 comment, establishes one or more definitions
9 for such term which are appropriate to the ac-
10 tivities of the agency and publishes such defini-
11 tions in the Federal Register.”.

12 **SEC. 303. EXPANSION OF REPORT OF REGULATORY AGEN-**

13 **DA.**

14 Section 602 of title 5, United States Code, is amend-
15 ed—

16 (1) in subsection (a)—

17 (A) in paragraph (2), by striking “, and”
18 at the end and inserting “;”;

19 (B) by redesignating paragraph (3) as
20 paragraph (4); and

21 (C) by inserting after paragraph (2) the
22 following:

23 “(3) a brief description of the sector of the
24 North American Industrial Classification System
25 that is primarily affected by any rule which the

1 agency expects to propose or promulgate which is
2 likely to have a significant economic impact on a
3 substantial number of small entities; and”;

4 (2) in subsection (c), to read as follows:

5 “(c) Each agency shall prominently display a plain
6 language summary of the information contained in the
7 regulatory flexibility agenda published under subsection
8 (a) on its website within 3 days of its publication in the
9 Federal Register. The Office of Advocacy of the Small
10 Business Administration shall compile and prominently
11 display a plain language summary of the regulatory agen-
12 das referenced in subsection (a) for each agency on its
13 website within 3 days of their publication in the Federal
14 Register.”.

15 **SEC. 304. REQUIREMENTS PROVIDING FOR MORE DE-**
16 **TAILED ANALYSES.**

17 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
18 Subsection (b) of section 603 of title 5, United States
19 Code, is amended to read as follows:

20 “(b) Each initial regulatory flexibility analysis re-
21 quired under this section shall contain a detailed state-
22 ment—

23 “(1) describing the reasons why action by the
24 agency is being considered;

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

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

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

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

15 “(6) estimating the additional cumulative eco-
16 nomic impact of the proposed rule on small entities
17 beyond that already imposed on the class of small
18 entities by the agency or why such an estimate is
19 not available;

20 “(7) describing any disproportionate economic
21 impact on small entities or a specific class of small
22 entities; and

23 “(8) describing any impairment of the ability of
24 small entities to have access to credit.”.

25 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

1 (1) IN GENERAL.—Section 604(a) of title 5,
2 United States Code, is amended—

3 (A) in paragraph (4), by striking “an ex-
4 planation” and inserting “a detailed expla-
5 nation”;

6 (B) in each of paragraphs (4), (5), and the
7 first paragraph (6), by inserting “detailed” be-
8 fore “description”;

9 (C) in the second paragraph (6), by strik-
10 ing the period and inserting “; and”;

11 (D) by redesignating the second paragraph
12 (6) as paragraph (7); and

13 (E) by adding at the end the following:

14 “(8) a detailed description of any dispropor-
15 tionate economic impact on small entities or a spe-
16 cific class of small entities.”.

17 (2) INCLUSION OF RESPONSE TO COMMENTS ON
18 CERTIFICATION OF PROPOSED RULE.—Paragraph
19 (2) of section 604(a) of title 5, United States Code,
20 is amended by inserting “(or certification of the pro-
21 posed rule under section 605(b))” after “initial reg-
22 ulatory flexibility analysis”.

23 (3) PUBLICATION OF ANALYSIS ON WEBSITE.—
24 Subsection (b) of section 604 of title 5, United
25 States Code, is amended to read as follows:

1 “(b) The agency shall make copies of the final regu-
2 latory flexibility analysis available to the public, including
3 placement of the entire analysis on the agency’s website,
4 and shall publish in the Federal Register the final regu-
5 latory flexibility analysis, or a summary thereof which in-
6 cludes the telephone number, mailing address, and link to
7 the website where the complete analysis may be ob-
8 tained.”.

9 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
10 Subsection (a) of section 605 of title 5, United States
11 Code, is amended to read as follows:

12 “(a) A Federal agency shall be treated as satisfying
13 any requirement regarding the content of an agenda or
14 regulatory flexibility analysis under section 602, 603, or
15 604, if such agency provides in such agenda or analysis
16 a cross-reference to the specific portion of another agenda
17 or analysis which is required by any other law and which
18 satisfies such requirement.”.

19 (d) CERTIFICATIONS.—Subsection (b) of section 605
20 of title 5, United States Code, is amended—

21 (1) by inserting “detailed” before “statement”
22 the first place it appears; and

23 (2) by inserting “and legal” after “factual”.

1 (e) QUANTIFICATION REQUIREMENTS.—Section 607
2 of title 5, United States Code, is amended to read as fol-
3 lows:

4 **“§ 607. Quantification requirements**

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

7 “(1) a quantifiable or numerical description of
8 the effects of the proposed or final rule and alter-
9 natives to the proposed or final rule; or

10 “(2) a more general descriptive statement and
11 a detailed statement explaining why quantification is
12 not practicable or reliable.”.

13 **SEC. 305. REPEAL OF WAIVER AND DELAY AUTHORITY; AD-**
14 **DITIONAL POWERS OF THE CHIEF COUNSEL**
15 **FOR ADVOCACY.**

16 (a) IN GENERAL.—Section 608 is amended to read
17 as follows:

18 **“§ 608. Additional powers of Chief Counsel for Advo-**
19 **cacy**

20 “(a)(1) Not later than 270 days after the date of the
21 enactment of this section, the Chief Counsel for Advocacy
22 of the Small Business Administration shall, after oppor-
23 tunity for notice and comment under section 553, issue
24 rules governing agency compliance with this chapter. The
25 Chief Counsel may modify or amend such rules after no-

1 tice and comment under section 553. This chapter (other
2 than this subsection) shall not apply with respect to the
3 issuance, modification, and amendment of rules under this
4 paragraph.

5 “(2) An agency shall not issue rules which supple-
6 ment the rules issued under subsection (a) unless such
7 agency has first consulted with the Chief Counsel for Ad-
8 vocacy to ensure that such supplemental rules comply with
9 this chapter and the rules issued under paragraph (1).

10 “(b) Notwithstanding any other law, the Chief Coun-
11 sel for Advocacy of the Small Business Administration
12 may intervene in any agency adjudication (unless such
13 agency is authorized to impose a fine or penalty under
14 such adjudication), and may inform the agency of the im-
15 pact that any decision on the record may have on small
16 entities. The Chief Counsel shall not initiate an appeal
17 with respect to any adjudication in which the Chief Coun-
18 sel intervenes under this subsection.

19 “(c) The Chief Counsel for Advocacy may file com-
20 ments in response to any agency notice requesting com-
21 ment, regardless of whether the agency is required to file
22 a general notice of proposed rulemaking under section
23 553.”.

24 (b) CONFORMING AMENDMENTS.—

1 (1) Section 611(a)(1) of such title is amended
2 by striking “608(b),”.

3 (2) Section 611(a)(2) of such title is amended
4 by striking “608(b),”.

5 (3) Section 611(a)(3) of such title is amend-
6 ed—

7 (A) by striking subparagraph (B); and

8 (B) by striking “(3)(A) A small entity”

9 and inserting the following:

10 “(3) A small entity”.

11 **SEC. 306. PROCEDURES FOR GATHERING COMMENTS.**

12 Section 609 of title 5, United States Code, is amend-
13 ed by striking subsection (b) and all that follows through
14 the end of the section and inserting the following:

15 “(b)(1) Prior to publication of any proposed rule de-
16 scribed in subsection (e), an agency making such rule shall
17 notify the Chief Counsel for Advocacy of the Small Busi-
18 ness Administration and provide the Chief Counsel with—

19 “(A) all materials prepared or utilized by the
20 agency in making the proposed rule, including the
21 draft of the proposed rule; and

22 “(B) information on the potential adverse and
23 beneficial economic impacts of the proposed rule on
24 small entities and the type of small entities that
25 might be affected.

1 “(2) An agency shall not be required under para-
2 graph (1) to provide the exact language of any draft if
3 the rule—

4 “(A) relates to the internal revenue laws of the
5 United States; or

6 “(B) is proposed by an independent regulatory
7 agency (as defined in section 3502(5) of title 44).

8 “(c) Not later than 15 days after the receipt of such
9 materials and information under subsection (b), the Chief
10 Counsel for Advocacy of the Small Business Administra-
11 tion shall—

12 “(1) identify small entities or representatives of
13 small entities or a combination of both for the pur-
14 pose of obtaining advice, input, and recommenda-
15 tions from those persons about the potential eco-
16 nomic impacts of the proposed rule and the compli-
17 ance of the agency with section 603; and

18 “(2) convene a review panel consisting of an
19 employee from the Office of Advocacy of the Small
20 Business Administration, an employee from the
21 agency making the rule, and in the case of an agen-
22 cy other than an independent regulatory agency (as
23 defined in section 3502(5) of title 44), an employee
24 from the Office of Information and Regulatory Af-
25 fairs of the Office of Management and Budget to re-

1 view the materials and information provided to the
2 Chief Counsel under subsection (b).

3 “(d)(1) Not later than 60 days after the review panel
4 described in subsection (c)(2) is convened, the Chief Coun-
5 sel for Advocacy of the Small Business Administration
6 shall, after consultation with the members of such panel,
7 submit a report to the agency and, in the case of an agen-
8 cy other than an independent regulatory agency (as de-
9 fined in section 3502(5) of title 44), the Office of Informa-
10 tion and Regulatory Affairs of the Office of Management
11 and Budget.

12 “(2) Such report shall include an assessment of the
13 economic impact of the proposed rule on small entities,
14 including an assessment of the proposed rule’s impact on
15 the cost that small entities pay for energy, an assessment
16 of the proposed rule’s impact on start-up costs for small
17 entities, and a discussion of any alternatives that will min-
18 imize adverse significant economic impacts or maximize
19 beneficial significant economic impacts on small entities.

20 “(3) Such report shall become part of the rulemaking
21 record. In the publication of the proposed rule, the agency
22 shall explain what actions, if any, the agency took in re-
23 sponse to such report.

24 “(e) A proposed rule is described by this subsection
25 if the Administrator of the Office of Information and Reg-

1 ulatory Affairs of the Office of Management and Budget,
2 the head of the agency (or the delegatee of the head of
3 the agency), or an independent regulatory agency deter-
4 mines that the proposed rule is likely to result in—

5 “(1) an annual effect on the economy of
6 \$100,000,000 or more;

7 “(2) a major increase in costs or prices for con-
8 sumers, individual industries, Federal, State, or local
9 governments, tribal organizations, or geographic re-
10 gions;

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

16 “(4) a significant economic impact on a sub-
17 stantial number of small entities.

18 “(f) Upon application by the agency, the Chief Coun-
19 sel for Advocacy of the Small Business Administration
20 may waive the requirements of subsections (b) through (e)
21 if the Chief Counsel determines that compliance with the
22 requirements of such subsections are impracticable, un-
23 necessary, or contrary to the public interest.

24 “(g) A small entity or a representative of a small enti-
25 ty may submit a request that the agency provide a copy

1 of the report prepared under subsection (d) and all mate-
2 rials and information provided to the Chief Counsel for
3 Advocacy of the Small Business Administration under
4 subsection (b). The agency receiving such request shall
5 provide the report, materials and information to the re-
6 questing small entity or representative of a small entity
7 not later than 10 business days after receiving such re-
8 quest, except that the agency shall not disclose any infor-
9 mation that is prohibited from disclosure to the public
10 pursuant to section 552(b) of this title.”.

11 **SEC. 307. PERIODIC REVIEW OF RULES.**

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

14 **“§ 610. Periodic review of rules**

15 “(a) Not later than 180 days after the enactment of
16 this section, each agency shall publish in the Federal Reg-
17 ister and place on its website a plan for the periodic review
18 of rules issued by the agency which the head of the agency
19 determines have a significant economic impact on a sub-
20 stantial number of small entities. Such determination shall
21 be made without regard to whether the agency performed
22 an analysis under section 604. The purpose of the review
23 shall be to determine whether such rules should be contin-
24 ued without change, or should be amended or rescinded,
25 consistent with the stated objectives of applicable statutes,

1 to minimize any adverse significant economic impacts or
2 maximize any beneficial significant economic impacts on
3 a substantial number of small entities. Such plan may be
4 amended by the agency at any time by publishing the revi-
5 sion in the Federal Register and subsequently placing the
6 amended plan on the agency’s website.

7 “(b) The plan shall provide for the review of all such
8 agency rules existing on the date of the enactment of this
9 section within 10 years of the date of publication of the
10 plan in the Federal Register and for review of rules adopt-
11 ed after the date of enactment of this section within 10
12 years after the publication of the final rule in the Federal
13 Register. If the head of the agency determines that com-
14 pletion of the review of existing rules is not feasible by
15 the established date, the head of the agency shall so certify
16 in a statement published in the Federal Register and may
17 extend the review for not longer than 2 years after publi-
18 cation of notice of extension in the Federal Register. Such
19 certification and notice shall be sent to the Chief Counsel
20 for Advocacy of the Small Business Administration and
21 the Congress.

22 “(c) The plan shall include a section that details how
23 an agency will conduct outreach to and meaningfully in-
24 clude small businesses (including small business concerns
25 owned and controlled by women, small business concerns

1 owned and controlled by veterans, and small business con-
2 cerns owned and controlled by socially and economically
3 disadvantaged individuals (as such terms are defined in
4 the Small Business Act)) for the purposes of carrying out
5 this section. The agency shall include in this section a plan
6 for how the agency will contact small businesses and gath-
7 er their input on existing agency rules.

8 “(d) Each agency shall annually submit a report re-
9 garding the results of its review pursuant to such plan
10 to the Congress, the Chief Counsel for Advocacy of the
11 Small Business Administration, and, in the case of agen-
12 cies other than independent regulatory agencies (as de-
13 fined in section 3502(5) of title 44) to the Administrator
14 of the Office of Information and Regulatory Affairs of the
15 Office of Management and Budget. Such report shall in-
16 clude the identification of any rule with respect to which
17 the head of the agency made a determination described
18 in paragraph (5) or (6) of subsection (e) and a detailed
19 explanation of the reasons for such determination.

20 “(e) In reviewing a rule pursuant to subsections (a)
21 through (d), the agency shall amend or rescind the rule
22 to minimize any adverse significant economic impact on
23 a substantial number of small entities or disproportionate
24 economic impact on a specific class of small entities, or
25 maximize any beneficial significant economic impact of the

1 rule on a substantial number of small entities to the great-
2 est extent possible, consistent with the stated objectives
3 of applicable statutes. In amending or rescinding the rule,
4 the agency shall consider the following factors:

5 “(1) The continued need for the rule.

6 “(2) The nature of complaints received by the
7 agency from small entities concerning the rule.

8 “(3) Comments by the Regulatory Enforcement
9 Ombudsman and the Chief Counsel for Advocacy of
10 the Small Business Administration.

11 “(4) The complexity of the rule.

12 “(5) The extent to which the rule overlaps, du-
13 plicates, or conflicts with other Federal rules and,
14 unless the head of the agency determines it to be in-
15 feasible, State, territorial, and local rules.

16 “(6) The contribution of the rule to the cumu-
17 lative economic impact of all Federal rules on the
18 class of small entities affected by the rule, unless the
19 head of the agency determines that such calculations
20 cannot be made and reports that determination in
21 the annual report required under subsection (d).

22 “(7) The length of time since the rule has been
23 evaluated or the degree to which technology, eco-
24 nomic conditions, or other factors have changed in
25 the area affected by the rule.

1 “(f) Each year, each agency shall publish in the Fed-
2 eral Register and on its website a list of rules to be re-
3 viewed pursuant to such plan. The agency shall include
4 in the publication a solicitation of public comments on any
5 further inclusions or exclusions of rules from the list, and
6 shall respond to such comments. Such publication shall
7 include a brief description of the rule, the reason why the
8 agency determined that it has a significant economic im-
9 pact on a substantial number of small entities (without
10 regard to whether it had prepared a final regulatory flexi-
11 bility analysis for the rule), and request comments from
12 the public, the Chief Counsel for Advocacy of the Small
13 Business Administration, and the Regulatory Enforce-
14 ment Ombudsman concerning the enforcement of the
15 rule.”.

16 **SEC. 308. JUDICIAL REVIEW OF COMPLIANCE WITH THE RE-**
17 **QUIREMENTS OF THE REGULATORY FLEXI-**
18 **BILITY ACT AVAILABLE AFTER PUBLICATION**
19 **OF THE FINAL RULE.**

20 (a) IN GENERAL.—Paragraph (1) of section 611(a)
21 of title 5, United States Code, is amended by striking
22 “final agency action” and inserting “such rule”.

23 (b) JURISDICTION.—Paragraph (2) of such section is
24 amended by inserting “(or which would have such jurisdic-

1 tion if publication of the final rule constituted final agency
2 action)” after “provision of law,”.

3 (c) TIME FOR BRINGING ACTION.—Paragraph (3) of
4 such section is amended—

5 (1) by striking “final agency action” and insert-
6 ing “publication of the final rule”; and

7 (2) by inserting “, in the case of a rule for
8 which the date of final agency action is the same
9 date as the publication of the final rule,” after “ex-
10 cept that”.

11 (d) INTERVENTION BY CHIEF COUNSEL FOR ADVO-
12 CACY.—Subsection (b) of section 612 of title 5, United
13 States Code, is amended by inserting before the first pe-
14 riod “or agency compliance with section 601, 603, 604,
15 605(b), 609, or 610”.

16 **SEC. 309. JURISDICTION OF COURT OF APPEALS OVER**
17 **RULES IMPLEMENTING THE REGULATORY**
18 **FLEXIBILITY ACT.**

19 (a) IN GENERAL.—Section 2342 of title 28, United
20 States Code, is amended—

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

23 (2) in paragraph (7), by striking the period at
24 the end and inserting “; and”; and

1 (3) by inserting after paragraph (7) the fol-
2 lowing new paragraph:

3 “(8) all final rules under section 608(a) of title
4 5.”.

5 (b) CONFORMING AMENDMENTS.—Paragraph (3) of
6 section 2341 of title 28, United States Code, is amended—

7 (1) in subparagraph (D), by striking “and” at
8 the end;

9 (2) in subparagraph (E), by striking the period
10 at the end and inserting “; and”; and

11 (3) by adding at the end the following new sub-
12 paragraph:

13 “(F) the Office of Advocacy of the Small
14 Business Administration, when the final rule is
15 under section 608(a) of title 5.”.

16 (c) AUTHORIZATION TO INTERVENE AND COMMENT
17 ON AGENCY COMPLIANCE WITH ADMINISTRATIVE PROCE-
18 DURE.—Subsection (b) of section 612 of title 5, United
19 States Code, is amended by inserting “chapter 5, and
20 chapter 7,” after “this chapter,”.

1 **SEC. 310. ESTABLISHMENT AND APPROVAL OF SMALL BUSI-**
2 **NESS CONCERN SIZE STANDARDS BY CHIEF**
3 **COUNSEL FOR ADVOCACY.**

4 (a) IN GENERAL.—Subparagraph (A) of section
5 3(a)(2) of the Small Business Act (15 U.S.C.
6 632(a)(2)(A)) is amended to read as follows:

7 “(A) IN GENERAL.—In addition to the cri-
8 teria specified in paragraph (1)—

9 “(i) the Administrator may specify de-
10 tailed definitions or standards by which a
11 business concern may be determined to be
12 a small business concern for purposes of
13 this Act or the Small Business Investment
14 Act of 1958; and

15 “(ii) the Chief Counsel for Advocacy
16 may specify such definitions or standards
17 for purposes of any other Act.”.

18 (b) APPROVAL BY CHIEF COUNSEL.—Clause (iii) of
19 section 3(a)(2)(C) of the Small Business Act (15 U.S.C.
20 632(a)(2)(C)(iii)) is amended to read as follows:

21 “(iii) except in the case of a size
22 standard prescribed by the Administrator,
23 is approved by the Chief Counsel for Advo-
24 cacy.”.

1 (c) INDUSTRY VARIATION.—Paragraph (3) of section
2 3(a) of the Small Business Act (15 U.S.C. 632(a)(3)) is
3 amended—

4 (1) by inserting “or Chief Counsel for Advo-
5 cacy, as appropriate” before “shall ensure”; and

6 (2) by inserting “or Chief Counsel for Advo-
7 cacy” before the period at the end.

8 (d) JUDICIAL REVIEW OF SIZE STANDARDS AP-
9 PROVED BY CHIEF COUNSEL.—Section 3(a) of the Small
10 Business Act (15 U.S.C. 632(a)) is amended by adding
11 at the end the following new paragraph:

12 “(9) JUDICIAL REVIEW OF STANDARDS AP-
13 PROVED BY CHIEF COUNSEL.—In the case of an ac-
14 tion for judicial review of a rule which includes a
15 definition or standard approved by the Chief Counsel
16 for Advocacy under this subsection, the party seek-
17 ing such review shall be entitled to join the Chief
18 Counsel as a party in such action.”.

19 **SEC. 311. CLERICAL AMENDMENTS.**

20 (a) DEFINITIONS.—Section 601 of title 5, United
21 States Code, is amended—

22 (1) in paragraph (1)—

23 (A) by striking the semicolon at the end
24 and inserting a period; and

1 (B) by striking “(1) the term” and insert-
2 ing the following:

3 “(1) AGENCY.—The term”;

4 (2) in paragraph (3)—

5 (A) by striking the semicolon at the end
6 and inserting a period; and

7 (B) by striking “(3) the term” and insert-
8 ing the following:

9 “(3) SMALL BUSINESS.—The term”;

10 (3) in paragraph (5)—

11 (A) by striking the semicolon at the end
12 and inserting a period; and

13 (B) by striking “(5) the term” and insert-
14 ing the following:

15 “(5) SMALL GOVERNMENTAL JURISDICTION.—
16 The term”; and

17 (4) in paragraph (6)—

18 (A) by striking “; and” and inserting a pe-
19 riod; and

20 (B) by striking “(6) the term” and insert-
21 ing the following:

22 “(6) SMALL ENTITY.—The term”.

23 (b) INCORPORATIONS BY REFERENCE AND CERTIFI-
24 CATIONS.—The heading of section 605 of title 5, United
25 States Code, is amended to read as follows:

1 **“§ 605. Incorporations by reference and certifi-**
2 **cations”.**

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

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

“605. Incorporations by reference and certifications.”;

7 (2) by striking the item relating to section 607
8 and inserting the following new item:

“607. Quantification requirements.”;

9 and

10 (3) by striking the item relating to section 608
11 and inserting the following:

“608. Additional powers of Chief Counsel for Advocacy.”.

12 (d) OTHER CLERICAL AMENDMENTS TO CHAPTER
13 6.—Chapter 6 of title 5, United States Code, is amended
14 in section 603(d)—

15 (1) by striking paragraph (2);

16 (2) by striking “(1) For a covered agency,” and
17 inserting “For a covered agency,”;

18 (3) by striking “(A) any” and inserting “(1)
19 any”;

20 (4) by striking “(B) any” and inserting “(2)
21 any”; and

22 (5) by striking “(C) advice” and inserting “(3)
23 advice”.

1 **SEC. 312. AGENCY PREPARATION OF GUIDES.**

2 Section 212(a)(5) the Small Business Regulatory En-
3 forcement Fairness Act of 1996 (5 U.S.C. 601 note) is
4 amended to read as follows:

5 “(5) AGENCY PREPARATION OF GUIDES.—The
6 agency shall, in its sole discretion, taking into ac-
7 count the subject matter of the rule and the lan-
8 guage of relevant statutes, ensure that the guide is
9 written using sufficiently plain language likely to be
10 understood by affected small entities. Agencies may
11 prepare separate guides covering groups or classes of
12 similarly affected small entities and may cooperate
13 with associations of small entities to distribute such
14 guides. In developing guides, agencies shall solicit
15 input from affected small entities or associations of
16 affected small entities. An agency may prepare
17 guides and apply this section with respect to a rule
18 or a group of related rules.”.

19 **SEC. 313. COMPTROLLER GENERAL REPORT.**

20 Not later than 90 days after the date of enactment
21 of this title, the Comptroller General of the United States
22 shall complete and publish a study that examines whether
23 the Chief Counsel for Advocacy of the Small Business Ad-
24 ministration has the capacity and resources to carry out
25 the duties of the Chief Counsel under this title and the
26 amendments made by this title.

1 **TITLE IV—SUNSHINE FOR REGU-**
2 **LATORY DECREES AND SET-**
3 **TLEMENTS ACT**

4 **SEC. 401. SHORT TITLE.**

5 This title may be cited as the “Sunshine for Regu-
6 latory Decrees and Settlements Act of 2014”.

7 **SEC. 402. DEFINITIONS.**

8 In this title—

9 (1) the terms “agency” and “agency action”
10 have the meanings given those terms under section
11 551 of title 5, United States Code;

12 (2) the term “covered civil action” means a civil
13 action—

14 (A) seeking to compel agency action;

15 (B) alleging that the agency is unlawfully
16 withholding or unreasonably delaying an agency
17 action relating to a regulatory action that would
18 affect the rights of—

19 (i) private persons other than the per-
20 son bringing the action; or

21 (ii) a State, local, or tribal govern-
22 ment; and

23 (C) brought under—

24 (i) chapter 7 of title 5, United States
25 Code; or

1 (ii) any other statute authorizing such
2 an action;

3 (3) the term “covered consent decree” means—

4 (A) a consent decree entered into in a cov-
5 ered civil action; and

6 (B) any other consent decree that requires
7 agency action relating to a regulatory action
8 that affects the rights of—

9 (i) private persons other than the per-
10 son bringing the action; or

11 (ii) a State, local, or tribal govern-
12 ment;

13 (4) the term “covered consent decree or settle-
14 ment agreement” means a covered consent decree
15 and a covered settlement agreement; and

16 (5) the term “covered settlement agreement”
17 means—

18 (A) a settlement agreement entered into in
19 a covered civil action; and

20 (B) any other settlement agreement that
21 requires agency action relating to a regulatory
22 action that affects the rights of—

23 (i) private persons other than the per-
24 son bringing the action; or

1 (ii) a State, local, or tribal govern-
2 ment.

3 **SEC. 403. CONSENT DECREE AND SETTLEMENT REFORM.**

4 (a) PLEADINGS AND PRELIMINARY MATTERS.—

5 (1) IN GENERAL.—In any covered civil action,
6 the agency against which the covered civil action is
7 brought shall publish the notice of intent to sue and
8 the complaint in a readily accessible manner, includ-
9 ing by making the notice of intent to sue and the
10 complaint available online not later than 15 days
11 after receiving service of the notice of intent to sue
12 or complaint, respectively.

13 (2) ENTRY OF A COVERED CONSENT DECREE
14 OR SETTLEMENT AGREEMENT.—A party may not
15 make a motion for entry of a covered consent decree
16 or to dismiss a civil action pursuant to a covered set-
17 tlement agreement until after the end of proceedings
18 in accordance with paragraph (1) and subpara-
19 graphs (A) and (B) of paragraph (2) of subsection
20 (d) or subsection (d)(3)(A), whichever is later.

21 (b) INTERVENTION.—

22 (1) REBUTTABLE PRESUMPTION.—In consid-
23 ering a motion to intervene in a covered civil action
24 or a civil action in which a covered consent decree
25 or settlement agreement has been proposed that is

1 filed by a person who alleges that the agency action
2 in dispute would affect the person, the court shall
3 presume, subject to rebuttal, that the interests of
4 the person would not be represented adequately by
5 the existing parties to the action.

6 (2) STATE, LOCAL, AND TRIBAL GOVERN-
7 MENTS.—In considering a motion to intervene in a
8 covered civil action or a civil action in which a cov-
9 ered consent decree or settlement agreement has
10 been proposed that is filed by a State, local, or tribal
11 government, the court shall take due account of
12 whether the movant—

13 (A) administers jointly with an agency that
14 is a defendant in the action the statutory provi-
15 sions that give rise to the regulatory action to
16 which the action relates; or

17 (B) administers an authority under State,
18 local, or tribal law that would be preempted by
19 the regulatory action to which the action re-
20 lates.

21 (c) SETTLEMENT NEGOTIATIONS.—Efforts to settle
22 a covered civil action or otherwise reach an agreement on
23 a covered consent decree or settlement agreement shall—

24 (1) be conducted pursuant to the mediation or
25 alternative dispute resolution program of the court

1 or by a district judge other than the presiding judge,
2 magistrate judge, or special master, as determined
3 appropriate by the presiding judge; and

4 (2) include any party that intervenes in the ac-
5 tion.

6 (d) PUBLICATION OF AND COMMENT ON COVERED
7 CONSENT DECREES OR SETTLEMENT AGREEMENTS.—

8 (1) IN GENERAL.—Not later than 60 days be-
9 fore the date on which a covered consent decree or
10 settlement agreement is filed with a court, the agen-
11 cy seeking to enter the covered consent decree or
12 settlement agreement shall publish in the Federal
13 Register and online—

14 (A) the proposed covered consent decree or
15 settlement agreement; and

16 (B) a statement providing—

17 (i) the statutory basis for the covered
18 consent decree or settlement agreement;
19 and

20 (ii) a description of the terms of the
21 covered consent decree or settlement agree-
22 ment, including whether it provides for the
23 award of attorneys' fees or costs and, if so,
24 the basis for including the award.

25 (2) PUBLIC COMMENT.—

1 (A) IN GENERAL.—An agency seeking to
2 enter a covered consent decree or settlement
3 agreement shall accept public comment during
4 the period described in paragraph (1) on any
5 issue relating to the matters alleged in the com-
6 plaint in the applicable civil action or addressed
7 or affected by the proposed covered consent de-
8 cree or settlement agreement.

9 (B) RESPONSE TO COMMENTS.—An agency
10 shall respond to any comment received under
11 subparagraph (A).

12 (C) SUBMISSIONS TO COURT.—When mov-
13 ing that the court enter a proposed covered con-
14 sent decree or settlement agreement or for dis-
15 missal pursuant to a proposed covered consent
16 decree or settlement agreement, an agency
17 shall—

18 (i) inform the court of the statutory
19 basis for the proposed covered consent de-
20 cree or settlement agreement and its
21 terms;

22 (ii) submit to the court a summary of
23 the comments received under subparagraph
24 (A) and the response of the agency to the
25 comments;

1 (iii) submit to the court a certified
2 index of the administrative record of the
3 notice and comment proceeding; and

4 (iv) make the administrative record
5 described in clause (iii) fully accessible to
6 the court.

7 (D) INCLUSION IN RECORD.—The court
8 shall include in the court record for a civil ac-
9 tion the certified index of the administrative
10 record submitted by an agency under subpara-
11 graph (C)(iii) and any documents listed in the
12 index which any party or amicus curiae appear-
13 ing before the court in the action submits to the
14 court.

15 (3) PUBLIC HEARINGS PERMITTED.—

16 (A) IN GENERAL.—After providing notice
17 in the Federal Register and online, an agency
18 may hold a public hearing regarding whether to
19 enter into a proposed covered consent decree or
20 settlement agreement.

21 (B) RECORD.—If an agency holds a public
22 hearing under subparagraph (A)—

23 (i) the agency shall—

24 (I) submit to the court a sum-
25 mary of the proceedings;

- 1 (II) submit to the court a cer-
2 tified index of the hearing record; and
3 (III) provide access to the hear-
4 ing record to the court; and
5 (ii) the full hearing record shall be in-
6 cluded in the court record.

7 (4) MANDATORY DEADLINES.—If a proposed
8 covered consent decree or settlement agreement re-
9 quires an agency action by a date certain, the agen-
10 cy shall, when moving for entry of the covered con-
11 sent decree or settlement agreement or dismissal
12 based on the covered consent decree or settlement
13 agreement, inform the court of—

14 (A) any required regulatory action the
15 agency has not taken that the covered consent
16 decree or settlement agreement does not ad-
17 dress;

18 (B) how the covered consent decree or set-
19 tlement agreement, if approved, would affect
20 the discharge of the duties described in sub-
21 paragraph (A); and

22 (C) why the effects of the covered consent
23 decree or settlement agreement on the manner
24 in which the agency discharges its duties is in
25 the public interest.

1 (e) SUBMISSION BY THE GOVERNMENT.—

2 (1) IN GENERAL.—For any proposed covered
3 consent decree or settlement agreement that con-
4 tains a term described in paragraph (2), the Attor-
5 ney General or, if the matter is being litigated inde-
6 pendently by an agency, the head of the agency shall
7 submit to the court a certification that the Attorney
8 General or head of the agency approves the proposed
9 covered consent decree or settlement agreement. The
10 Attorney General or head of the agency shall person-
11 ally sign any certification submitted under this para-
12 graph.

13 (2) TERMS.—A term described in this para-
14 graph is—

15 (A) in the case of a covered consent decree,
16 a term that—

17 (i) converts into a nondiscretionary
18 duty a discretionary authority of an agency
19 to propose, promulgate, revise, or amend
20 regulations;

21 (ii) commits an agency to expend
22 funds that have not been appropriated and
23 that have not been budgeted for the regu-
24 latory action in question;

1 (iii) commits an agency to seek a par-
2 ticular appropriation or budget authoriza-
3 tion;

4 (iv) divests an agency of discretion
5 committed to the agency by statute or the
6 Constitution of the United States, without
7 regard to whether the discretion was
8 granted to respond to changing cir-
9 cumstances, to make policy or managerial
10 choices, or to protect the rights of third
11 parties; or

12 (v) otherwise affords relief that the
13 court could not enter under its own au-
14 thority upon a final judgment in the civil
15 action; or

16 (B) in the case of a covered settlement
17 agreement, a term—

18 (i) that provides a remedy for a fail-
19 ure by the agency to comply with the
20 terms of the covered settlement agreement
21 other than the revival of the civil action re-
22 solved by the covered settlement agree-
23 ment; and

24 (ii) that—

1 (I) interferes with the authority
2 of an agency to revise, amend, or
3 issue rules under the procedures set
4 forth in chapter 5 of title 5, United
5 States Code, or any other statute or
6 Executive order prescribing rule-
7 making procedures for a rulemaking
8 that is the subject of the covered set-
9 tlement agreement;

10 (II) commits the agency to ex-
11 pend funds that have not been appro-
12 priated and that have not been budg-
13 eted for the regulatory action in ques-
14 tion; or

15 (III) for such a covered settle-
16 ment agreement that commits the
17 agency to exercise in a particular way
18 discretion which was committed to the
19 agency by statute or the Constitution
20 of the United States to respond to
21 changing circumstances, to make pol-
22 icy or managerial choices, or to pro-
23 tect the rights of third parties.

24 (f) REVIEW BY COURT.—

1 (1) AMICUS.—A court considering a proposed
2 covered consent decree or settlement agreement shall
3 presume, subject to rebuttal, that it is proper to
4 allow amicus participation relating to the covered
5 consent decree or settlement agreement by any per-
6 son who filed public comments or participated in a
7 public hearing on the covered consent decree or set-
8 tlement agreement under paragraph (2) or (3) of
9 subsection (d).

10 (2) REVIEW OF DEADLINES.—

11 (A) PROPOSED COVERED CONSENT DE-
12 CREES.—For a proposed covered consent de-
13 cree, a court shall not approve the covered con-
14 sent decree unless the proposed covered consent
15 decree allows sufficient time and incorporates
16 adequate procedures for the agency to comply
17 with chapter 5 of title 5, United States Code,
18 and other applicable statutes that govern rule-
19 making and, unless contrary to the public inter-
20 est, the provisions of any Executive order that
21 governs rulemaking.

22 (B) PROPOSED COVERED SETTLEMENT
23 AGREEMENTS.—For a proposed covered settle-
24 ment agreement, a court shall ensure that the
25 covered settlement agreement allows sufficient

1 time and incorporates adequate procedures for
2 the agency to comply with chapter 5 of title 5,
3 United States Code, and other applicable stat-
4 utes that govern rulemaking and, unless con-
5 trary to the public interest, the provisions of
6 any Executive order that governs rulemaking.

7 (g) ANNUAL REPORTS.—Each agency shall submit to
8 Congress an annual report that, for the year covered by
9 the report, includes—

10 (1) the number, identity, and content of covered
11 civil actions brought against and covered consent de-
12 crees or settlement agreements entered against or
13 into by the agency; and

14 (2) a description of the statutory basis for—

15 (A) each covered consent decree or settle-
16 ment agreement entered against or into by the
17 agency; and

18 (B) any award of attorneys fees or costs in
19 a civil action resolved by a covered consent de-
20 cree or settlement agreement entered against or
21 into by the agency.

22 **SEC. 404. MOTIONS TO MODIFY CONSENT DECREES.**

23 If an agency moves a court to modify a covered con-
24 sent decree or settlement agreement and the basis of the
25 motion is that the terms of the covered consent decree or

1 settlement agreement are no longer fully in the public in-
2 terest due to the obligations of the agency to fulfill other
3 duties or due to changed facts and circumstances, the
4 court shall review the motion and the covered consent de-
5 cree or settlement agreement de novo.

6 **SEC. 405. EFFECTIVE DATE.**

7 This title shall apply to—

8 (1) any covered civil action filed on or after the
9 date of enactment of this title; and

10 (2) any covered consent decree or settlement
11 agreement proposed to a court on or after the date
12 of enactment of this title.

13 **DIVISION IV—JUDICIARY**
14 **TITLE I—REGULATIONS FROM**
15 **THE EXECUTIVE IN NEED OF**
16 **SCRUTINY**

17 **SEC. 101. SHORT TITLE.**

18 This title may be cited as the “Regulations From the
19 Executive in Need of Scrutiny Act of 2014”.

20 **SEC. 102. 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, the REINS Act will result
 4 in 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, the REINS Act includes in the
 11 definition of a major rule, any rule that implements or
 12 provides for the imposition or collection of a tax on carbon
 13 emissions.

14 **SEC. 103. 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; or

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. 104. 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. 105. 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 Act—

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 Act, the Comptroller General of
19 the United States shall submit a report to Congress that
20 contains the findings of the study conducted under sub-
21 section (a).

1 **TITLE II—PERMANENT**
2 **INTERNET TAX FREEDOM**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Permanent Internet
5 Tax Freedom Act”.

6 **SEC. 202. PERMANENT MORATORIUM ON INTERNET AC-**
7 **CESS TAXES AND MULTIPLE AND DISCRIMI-**
8 **NATORY TAXES ON ELECTRONIC COMMERCE.**

9 (a) **IN GENERAL.**—Section 1101(a) of the Internet
10 Tax Freedom Act (47 U.S.C. 151 note) is amended by
11 striking “ during the period beginning November 1, 2003,
12 and ending November 1, 2014”.

13 (b) **EFFECTIVE DATE.**—The amendment made by
14 this section shall apply to taxes imposed after the date
15 of the enactment of this Act.

16 **DIVISION V—NATURAL**
17 **RESOURCES**
18 **SUBDIVISION A—RESTORING**
19 **HEALTHY FORESTS FOR**
20 **HEALTHY COMMUNITIES**

21 **SEC. 100. SHORT TITLE.**

22 This subdivision may be cited as the “Restoring
23 Healthy Forests for Healthy Communities Act”.

1 **TITLE I—RESTORING THE COM-**
2 **MITMENT TO RURAL COUN-**
3 **TIES AND SCHOOLS**

4 **SEC. 101. PURPOSES.**

5 The purposes of this title are as follows:

6 (1) To restore employment and educational op-
7 portunities in, and improve the economic stability of,
8 counties containing National Forest System land.

9 (2) To ensure that such counties have a de-
10 pendable source of revenue from National Forest
11 System land.

12 (3) To reduce Forest Service management costs
13 while also ensuring the protection of United States
14 forests resources.

15 **SEC. 102. DEFINITIONS.**

16 In this title:

17 (1) ANNUAL VOLUME REQUIREMENT.—

18 (A) IN GENERAL.—The term “annual vol-
19 ume requirement”, with respect to a Forest Re-
20 serve Revenue Area, means a volume of na-
21 tional forest materials no less than 50 percent
22 of the sustained yield of the Forest Reserve
23 Revenue Area.

24 (B) EXCLUSIONS.—In determining the vol-
25 ume of national forest materials or the sus-

1 tained yield of a Forest Reserve Revenue Area,
2 the Secretary may not include non-commercial
3 post and pole sales and personal use firewood.

4 (2) BENEFICIARY COUNTY.—The term “bene-
5 ficiary county” means a political subdivision of a
6 State that, on account of containing National Forest
7 System land, was eligible to receive payments
8 through the State under title I of the Secure Rural
9 Schools and Community Self-Determination Act of
10 2000 (16 U.S.C. 7111 et seq.).

11 (3) CATASTROPHIC EVENT.—The term “cata-
12 strophic event” means an event (including severe
13 fire, insect or disease infestations, windthrow, or
14 other extreme weather or natural disaster) that the
15 Secretary determines will cause or has caused sub-
16 stantial damage to National Forest System land or
17 natural resources on National Forest System land.

18 (4) COVERED FOREST RESERVE PROJECT.—
19 The terms “covered forest reserve project” and “cov-
20 ered project” mean a project involving the manage-
21 ment or sale of national forest materials within a
22 Forest Reserve Revenue Area to generate forest re-
23 serve revenues and achieve the annual volume re-
24 quirement for the Forest Reserve Revenue Area.

25 (5) FOREST RESERVE REVENUE AREA.—

1 (A) IN GENERAL.—The term “Forest Re-
2 serve Revenue Area” means National Forest
3 System land in a unit of the National Forest
4 System designated for sustainable forest man-
5 agement for the production of national forest
6 materials and forest reserve revenues.

7 (B) INCLUSIONS.—Subject to subpara-
8 graph (C), but otherwise notwithstanding any
9 other provision of law, including executive or-
10 ders and regulations, the Secretary shall include
11 in Forest Reserve Revenue Areas not less than
12 50 percent of the National Forest System lands
13 identified as commercial forest land capable of
14 producing twenty cubic feet of timber per acre.

15 (C) EXCLUSIONS.—A Forest Reserve Rev-
16 enue Area may not include National Forest
17 System land—

18 (i) that is a component of the Na-
19 tional Wilderness Preservation System;

20 (ii) on which the removal of vegetation
21 is specifically prohibited by Federal stat-
22 ute; or

23 (iii) that is within a National Monu-
24 ment as of the date of the enactment of
25 this Act.

1 (6) FOREST RESERVE REVENUES.—The term
2 “forest reserve revenues” means revenues derived
3 from the sale of national forest materials in a Forest
4 Reserve Revenue Area.

5 (7) NATIONAL FOREST MATERIALS.—The term
6 “national forest materials” has the meaning given
7 that term in section 14(e)(1) of the National Forest
8 Management Act of 1976 (16 U.S.C. 472a(e)(1)).

9 (8) NATIONAL FOREST SYSTEM.—The term
10 “National Forest System” has the meaning given
11 that term in section 11(a) of the Forest and Range-
12 land Renewable Resources Planning Act of 1974 (16
13 U.S.C. 1609(a)), except that the term does not in-
14 clude the National Grasslands and land utilization
15 projects designated as National Grasslands adminis-
16 tered pursuant to the Act of July 22, 1937 (7
17 U.S.C. 1010–1012).

18 (9) SECRETARY.—The term “Secretary” means
19 the Secretary of Agriculture.

20 (10) SUSTAINED YIELD.—The term “sustained
21 yield” means the maximum annual growth potential
22 of the forest calculated on the basis of the culmina-
23 tion of mean annual increment using cubic measure-
24 ment.

1 (11) STATE.—The term “State” includes the
2 Commonwealth of Puerto Rico.

3 (12) 25-PERCENT PAYMENT.—The term “25-
4 percent payment” means the payment to States re-
5 quired by the sixth paragraph under the heading of
6 “FOREST SERVICE” in the Act of May 23, 1908
7 (35 Stat. 260; 16 U.S.C. 500), and section 13 of the
8 Act of March 1, 1911 (36 Stat. 963; 16 U.S.C.
9 500).

10 **SEC. 103. ESTABLISHMENT OF FOREST RESERVE REVENUE**

11 **AREAS AND ANNUAL VOLUME REQUIRE-**
12 **MENTS.**

13 (a) ESTABLISHMENT OF FOREST RESERVE REV-
14 ENUE AREAS.—Notwithstanding any other provision of
15 law, the Secretary shall establish one or more Forest Re-
16 serve Revenue Areas within each unit of the National For-
17 est System.

18 (b) DEADLINE FOR ESTABLISHMENT.—The Sec-
19 retary shall complete establishment of the Forest Reserve
20 Revenue Areas not later than 60 days after the date of
21 enactment of this Act,

22 (c) PURPOSE.—The purpose of a Forest Reserve Rev-
23 enue Area is to provide a dependable source of 25-percent
24 payments and economic activity through sustainable forest

1 management for each beneficiary county containing Na-
2 tional Forest System land.

3 (d) FIDUCIARY RESPONSIBILITY.—The Secretary
4 shall have a fiduciary responsibility to beneficiary counties
5 to manage Forest Reserve Revenue Areas to satisfy the
6 annual volume requirement.

7 (e) DETERMINATION OF ANNUAL VOLUME REQUIRE-
8 MENT.—Not later than 30 days after the date of the es-
9 tablishment of a Forest Reserve Revenue Area, the Sec-
10 retary shall determine the annual volume requirement for
11 that Forest Reserve Revenue Area.

12 (f) LIMITATION ON REDUCTION OF FOREST RE-
13 SERVE REVENUE AREAS.—Once a Forest Reserve Rev-
14 enue Area is established under subsection (a), the Sec-
15 retary may not reduce the number of acres of National
16 Forest System land included in that Forest Reserve Rev-
17 enue Area.

18 (g) MAP.—The Secretary shall provide a map of all
19 Forest Reserve Revenue Areas established under sub-
20 section (a) for each unit of the National Forest System—

21 (1) to the Committee on Agriculture and the
22 Committee on Natural Resources of the House of
23 Representatives; and

1 (2) to the Committee on Agriculture, Nutrition,
2 and Forestry and the Committee on Energy and
3 Natural Resources of the Senate.

4 (h) RECOGNITION OF VALID AND EXISTING
5 RIGHTS.—Neither the establishment of Forest Reserve
6 Revenue Areas under subsection (a) nor any other provi-
7 sion of this title shall be construed to limit or restrict—

8 (1) access to National Forest System land for
9 hunting, fishing, recreation, and other related pur-
10 poses; or

11 (2) valid and existing rights regarding National
12 Forest System land, including rights of any federally
13 recognized Indian tribe.

14 **SEC. 104. MANAGEMENT OF FOREST RESERVE REVENUE**
15 **AREAS.**

16 (a) REQUIREMENT TO ACHIEVE ANNUAL VOLUME
17 REQUIREMENT.—Immediately upon the establishment of
18 a Forest Reserve Revenue Area, the Secretary shall man-
19 age the Forest Reserve Revenue Area in the manner nec-
20 essary to achieve the annual volume requirement for the
21 Forest Reserve Revenue Area. The Secretary is authorized
22 and encouraged to commence covered forest reserve
23 projects as soon as practicable after the date of the enact-
24 ment of this Act to begin generating forest reserve reve-
25 nues.

1 (b) STANDARDS FOR PROJECTS WITHIN FOREST RE-
2 SERVE REVENUE AREAS.—The Secretary shall conduct
3 covered forest reserve projects within Forest Reserve Rev-
4 enue Areas in accordance with this section, which shall
5 serve as the sole means by which the Secretary will comply
6 with the National Environmental Policy Act of 1969 (42
7 U.S.C. 4331 et seq.) and other laws applicable to the cov-
8 ered projects.

9 (c) ENVIRONMENTAL ANALYSIS PROCESS FOR
10 PROJECTS IN FOREST RESERVE REVENUE AREAS.—

11 (1) ENVIRONMENTAL ASSESSMENT.—The Sec-
12 retary shall give published notice and complete an
13 environmental assessment pursuant to section
14 102(2) of the National Environmental Policy Act of
15 1969 (42 U.S.C. 4332(2)) for a covered forest re-
16 serve project proposed to be conducted within a For-
17 est Reserve Revenue Area, except that the Secretary
18 is not required to study, develop, or describe any al-
19 ternative to the proposed agency action.

20 (2) CUMULATIVE EFFECTS.—The Secretary
21 shall consider cumulative effects solely by evaluating
22 the impacts of a proposed covered forest reserve
23 project combined with the impacts of any other
24 projects that were approved with a Decision Notice
25 or Record of Decision before the date on which the

1 Secretary published notice of the proposed covered
2 project. The cumulative effects of past projects may
3 be considered in the environmental assessment by
4 using a description of the current environmental
5 conditions.

6 (3) LENGTH.—The environmental assessment
7 prepared for a proposed covered forest reserve
8 project shall not exceed 100 pages in length. The
9 Secretary may incorporate in the environmental as-
10 sessment, by reference, any documents that the Sec-
11 retary determines, in the sole discretion of the Sec-
12 retary, are relevant to the assessment of the environ-
13 mental effects of the covered project.

14 (4) DEADLINE FOR COMPLETION.—The Sec-
15 retary shall complete the environmental assessment
16 for a covered forest reserve project within 180 days
17 after the date on which the Secretary published no-
18 tice of the proposed covered project.

19 (5) TREATMENT OF DECISION NOTICE.—The
20 decision notice for a covered forest reserve project
21 shall be considered a final agency action and no ad-
22 ditional analysis under the National Environmental
23 Policy Act of 1969 (42 U.S.C. 4331 et seq.) shall be
24 required to implement any portion of the covered
25 project.

1 (6) CATEGORICAL EXCLUSION.—A covered for-
2 est reserve project that is proposed in response to a
3 catastrophic event, that covers an area of 10,000
4 acres or less, or an eligible hazardous fuel reduction
5 or forest health project proposed under title II that
6 involves the removal of insect-infected trees, dead or
7 dying trees, trees presenting a threat to public safe-
8 ty, or other hazardous fuels within 500 feet of utility
9 or telephone infrastructure, campgrounds, roadsides,
10 heritage sites, recreation sites, schools, or other in-
11 frastructure, shall be categorically excluded from the
12 requirements of the National Environmental Policy
13 Act of 1969 (42 U.S.C. 4331 et seq.).

14 (d) APPLICATION OF LAND AND RESOURCE MANAGE-
15 MENT PLAN.—The Secretary may modify the standards
16 and guidelines contained in the land and resource manage-
17 ment plan for the unit of the National Forest System in
18 which the covered forest reserve project will be carried out
19 as necessary to achieve the requirements of this subdivi-
20 sion. Section 6(g)(3)(E)(iv) of the Forest and Rangeland
21 Renewable Resources Planning Act of 1974 (16 U.S.C.
22 1604(g)(3)(E)(iv)) shall not apply to a covered forest re-
23 serve project.

24 (e) COMPLIANCE WITH ENDANGERED SPECIES
25 ACT.—

1 (1) NON-JEOPARDY ASSESSMENT.—If the Sec-
2 retary determines that a proposed covered forest re-
3 serve project may affect the continued existence of
4 any species listed as endangered or threatened under
5 section 4 of the Endangered Species Act of 1973 (16
6 U.S.C. 1533), the Secretary shall issue a determina-
7 tion explaining the view of the Secretary that the
8 proposed covered project is not likely to jeopardize
9 the continued existence of the species.

10 (2) SUBMISSION, REVIEW, AND RESPONSE.—

11 (A) SUBMISSION.—The Secretary shall
12 submit a determination issued by the Secretary
13 under paragraph (1) to the Secretary of the In-
14 terior or the Secretary of Commerce, as appro-
15 priate.

16 (B) REVIEW AND RESPONSE.—Within 30
17 days after receiving a determination under sub-
18 paragraph (A), the Secretary of the Interior or
19 the Secretary of Commerce, as appropriate,
20 shall provide a written response to the Sec-
21 retary concurring in or rejecting the Secretary's
22 determination. If the Secretary of the Interior
23 or the Secretary of Commerce rejects the deter-
24 mination, the written response shall include rec-
25 ommendations for measures that—

1 (i) will avoid the likelihood of jeopardy
2 to an endangered or threatened species;

3 (ii) can be implemented in a manner
4 consistent with the intended purpose of the
5 covered forest reserve project;

6 (iii) can be implemented consistent
7 with the scope of the Secretary's legal au-
8 thority and jurisdiction; and

9 (iv) are economically and techno-
10 logically feasible.

11 (3) FORMAL CONSULTATION.—If the Secretary
12 of the Interior or the Secretary of Commerce rejects
13 a determination issued by the Secretary under para-
14 graph (1), the Secretary of the Interior or the Sec-
15 retary of Commerce also is required to engage in
16 formal consultation with the Secretary. The Secre-
17 taries shall complete such consultation pursuant to
18 section 7 of the Endangered Species Act of 1973 (16
19 U.S.C. 1536) within 90 days after the submission of
20 the written response under paragraph (2).

21 (f) ADMINISTRATIVE AND JUDICIAL REVIEW.—

22 (1) ADMINISTRATIVE REVIEW.—Administrative
23 review of a covered forest reserve project shall occur
24 only in accordance with the special administrative
25 review process established under section 105 of the

1 Healthy Forests Restoration Act of 2003 (16 U.S.C.
2 6515).

3 (2) JUDICIAL REVIEW.—

4 (A) IN GENERAL.—Judicial review of a
5 covered forest reserve project shall occur in ac-
6 cordance with section 106 of the Healthy For-
7 ests Restoration Act of 2003 (16 U.S.C. 6516),
8 except that a court of the United States may
9 not issue a restraining order, preliminary in-
10 junction, or injunction pending appeal covering
11 a covered forest reserve project in response to
12 an allegation that the Secretary violated any
13 procedural requirement applicable to how the
14 project was selected, planned, or analyzed.

15 (B) BOND REQUIRED.—A plaintiff chal-
16 lenging a covered forest reserve project shall be
17 required to post a bond or other security ac-
18 ceptable to the court for the reasonably esti-
19 mated costs, expenses, and attorneys fees of the
20 Secretary as defendant. All proceedings in the
21 action shall be stayed until the security is given.
22 If the plaintiff has not complied with the order
23 to post such bond or other security within 90
24 days after the date of service of the order, then
25 the action shall be dismissed with prejudice.

1 (C) RECOVERY.—If the Secretary prevails
2 in the case, the Secretary shall submit to the
3 court a motion for payment of all litigation ex-
4 penses.

5 (g) USE OF ALL-TERRAIN VEHICLES FOR MANAGE-
6 MENT ACTIVITIES.—The Secretary may allow the use of
7 all-terrain vehicles within the Forest Reserve Revenue
8 Areas for the purpose of activities associated with the sale
9 of national forest materials in a Forest Reserve Revenue
10 Area.

11 **SEC. 105. DISTRIBUTION OF FOREST RESERVE REVENUES.**

12 (a) 25-PERCENT PAYMENTS.—The Secretary shall
13 use forest reserve revenues generated by a covered forest
14 reserve project to make 25-percent payments to States for
15 the benefit of beneficiary counties.

16 (b) DEPOSIT IN KNUTSON-VANDENBERG AND SAL-
17 VAGE SALE FUNDS.—After compliance with subsection
18 (a), the Secretary shall use forest reserve revenues to
19 make deposits into the fund established under section 3
20 of the Act of June 9, 1930 (16 U.S.C. 576b; commonly
21 known as the Knutson-Vandenberg Fund) and the fund
22 established under section 14(h) of the National Forest
23 Management Act of 1976 (16 U.S.C. 472a(h); commonly
24 known as the salvage sale fund) in contributions equal to

1 the monies otherwise collected under those Acts for
2 projects conducted on National Forest System land.

3 (c) DEPOSIT IN GENERAL FUND OF THE TREAS-
4 URY.—After compliance with subsections (a) and (b), the
5 Secretary shall deposit remaining forest reserve revenues
6 into the general fund of the Treasury.

7 **SEC. 106. ANNUAL REPORT.**

8 (a) REPORT REQUIRED.—Not later than 60 days
9 after the end of each fiscal year, the Secretary shall sub-
10 mit to Congress an annual report specifying the annual
11 volume requirement in effect for that fiscal year for each
12 Forest Reserve Revenue Area, the volume of board feet
13 actually harvested for each Forest Reserve Revenue Area,
14 the average cost of preparation for timber sales, the forest
15 reserve revenues generated from such sales, and the
16 amount of receipts distributed to each beneficiary county.

17 (b) FORM OF REPORT.—The information required by
18 subsection (a) to be provided with respect to a Forest Re-
19 serve Revenue Area shall be presented on a single page.
20 In addition to submitting each report to Congress, the
21 Secretary shall also make the report available on the
22 website of the Forest Service.

1 **TITLE II—HEALTHY FOREST**
2 **MANAGEMENT AND CATA-**
3 **STROPHIC WILDFIRE PRE-**
4 **VENTION**

5 **SEC. 201. PURPOSES.**

6 The purposes of this title are as follows:

7 (1) To provide the Secretary of Agriculture and
8 the Secretary of the Interior with the tools necessary
9 to reduce the potential for wildfires.

10 (2) To expedite wildfire prevention projects to
11 reduce the chances of wildfire on certain high-risk
12 Federal lands.

13 (3) To protect communities and forest habitat
14 from uncharacteristic wildfires.

15 (4) To enhance aquatic conditions and terres-
16 trial wildlife habitat.

17 (5) To restore diverse and resilient landscapes
18 through improved forest conditions.

19 **SEC. 202. DEFINITIONS.**

20 In this title:

21 (1) **AT-RISK COMMUNITY.**—The term “at-risk
22 community” has the meaning given that term in sec-
23 tion 101 of the Healthy Forests Restoration Act of
24 2003 (16 U.S.C. 6511).

1 (2) AT-RISK FOREST.—The term “at-risk for-
2 est” means—

3 (A) Federal land in condition class II or
4 III, as those classes were developed by the For-
5 est Service Rocky Mountain Research Station
6 in the general technical report titled “Develop-
7 ment of Coarse-Scale Spatial Data for Wildland
8 Fire and Fuel Management” (RMRS-87) and
9 dated April 2000 or any subsequent revision of
10 the report; or

11 (B) Federal land where there exists a high
12 risk of losing an at-risk community, key eco-
13 system, water supply, wildlife, or wildlife habi-
14 tat to wildfire, including catastrophic wildfire
15 and post-fire disturbances, as designated by the
16 Secretary concerned.

17 (3) FEDERAL LAND.—

18 (A) COVERED LAND.—The term “Federal
19 land” means—

20 (i) land of the National Forest System
21 (as defined in section 11(a) of the Forest
22 and Rangeland Renewable Resources Plan-
23 ning Act of 1974 (16 U.S.C. 1609(a))); or

1 (ii) public lands (as defined in section
2 103 of the Federal Land Policy and Man-
3 agement Act of 1976 (43 U.S.C. 1702)).

4 (B) EXCLUDED LAND.—The term does not
5 include land—

6 (i) that is a component of the Na-
7 tional Wilderness Preservation System;

8 (ii) on which the removal of vegetation
9 is specifically prohibited by Federal stat-
10 ute; or

11 (iii) that is within a National Monu-
12 ment as of the date of the enactment of
13 this Act.

14 (4) HIGH-RISK AREA.—The term “high-risk
15 area” means an area of Federal land identified
16 under section 205 as an area suffering from the
17 bark beetle epidemic, drought, or deteriorating forest
18 health conditions, with the resulting imminent risk
19 of devastating wildfires, or otherwise at high risk for
20 bark beetle infestation, drought, or wildfire.

21 (5) SECRETARY CONCERNED.—The term “Sec-
22 retary concerned” means—

23 (A) the Secretary of Agriculture, in the
24 case of National Forest System land; and

1 (B) the Secretary of the Interior, in the
2 case of public lands.

3 (6) ELIGIBLE HAZARDOUS FUEL REDUCTION
4 AND FOREST HEALTH PROJECTS.—The terms “haz-
5 arduous fuel reduction project” or “forest health
6 project” mean the measures and methods developed
7 for a project to be carried out on Federal land—

8 (A) in an at-risk forest under section 203
9 for hazardous fuels reduction, forest health, for-
10 est restoration, or watershed restoration, using
11 ecological restoration principles consistent with
12 the forest type where such project will occur; or

13 (B) in a high-risk area under section 206.

14 **SEC. 203. HAZARDOUS FUEL REDUCTION PROJECTS AND**
15 **FOREST HEALTH PROJECTS IN AT-RISK FOR-**
16 **ESTS.**

17 (a) IMPLEMENTATION.—As soon as practicable after
18 the date of the enactment of this Act, the Secretary con-
19 cerned is authorized to implement a hazardous fuel reduc-
20 tion project or a forest health project in at-risk forests
21 in a manner that focuses on surface, ladder, and canopy
22 fuels reduction activities using ecological restoration prin-
23 ciples consistent with the forest type in the location where
24 such project will occur.

25 (b) AUTHORIZED PRACTICES.—

1 (1) INCLUSION OF LIVESTOCK GRAZING AND
2 TIMBER HARVESTING.—A hazardous fuel reduction
3 project or a forest health project may include live-
4 stock grazing and timber harvest projects carried
5 out for the purposes of hazardous fuels reduction,
6 forest health, forest restoration, watershed restora-
7 tion, or threatened and endangered species habitat
8 protection or improvement, if the management ac-
9 tion is consistent with achieving long-term ecological
10 restoration of the forest type in the location where
11 such project will occur.

12 (2) GRAZING.—Domestic livestock grazing may
13 be used in a hazardous fuel reduction project or a
14 forest health project to reduce surface fuel loads and
15 to recover burned areas. Utilization standards shall
16 not apply when domestic livestock grazing is used in
17 such a project.

18 (3) TIMBER HARVESTING AND THINNING.—
19 Timber harvesting and thinning, where the ecologi-
20 cal restoration principles are consistent with the for-
21 est type in the location where such project will
22 occur, may be used in a hazardous fuel reduction
23 project or a forest health project to reduce ladder
24 and canopy fuel loads to prevent unnatural fire.

1 (c) PRIORITY.—The Secretary concerned shall give
2 priority to hazardous fuel reduction projects and forest
3 health projects submitted by the Governor of a State as
4 provided in section 206(c) and to projects submitted under
5 the Tribal Forest Protection Act of 2004 (25 U.S.C.
6 3115a).

7 **SEC. 204. ENVIRONMENTAL ANALYSIS.**

8 Subsections (b) through (f) of section 104 shall apply
9 to the implementation of a hazardous fuel reduction
10 project or a forest health project under this title. In addi-
11 tion, if the primary purpose of a hazardous fuel reduction
12 project or a forest health project under this title is the
13 salvage of dead, damaged, or down timber resulting from
14 wildfire occurring in 2013 or 2014, the hazardous fuel re-
15 duction project or forest health project, and any decision
16 of the Secretary concerned in connection with the project,
17 shall not be subject to judicial review or to any restraining
18 order or injunction issued by a United States court.

19 **SEC. 205. STATE DESIGNATION OF HIGH-RISK AREAS OF NA-**
20 **TIONAL FOREST SYSTEM AND PUBLIC LANDS.**

21 (a) DESIGNATION AUTHORITY.—The Governor of a
22 State may designate high-risk areas of Federal land in the
23 State for the purposes of addressing—

24 (1) deteriorating forest health conditions in ex-
25 istence as of the date of the enactment of this Act

1 due to the bark beetle epidemic or drought, with the
2 resulting imminent risk of devastating wildfires; and

3 (2) the future risk of insect infestations or dis-
4 ease outbreaks through preventative treatments to
5 improve forest health conditions.

6 (b) CONSULTATION.—In designating high-risk areas,
7 the Governor of a State shall consult with county govern-
8 ment from affected counties and with affected Indian
9 tribes.

10 (c) EXCLUSION OF CERTAIN AREAS.—The following
11 Federal land may not be designated as a high-risk area:

12 (1) A component of the National Wilderness
13 Preservation System.

14 (2) Federal land on which the removal of vege-
15 tation is specifically prohibited by Federal statute.

16 (3) Federal land within a National Monument
17 as of the date of the enactment of this Act.

18 (d) STANDARDS FOR DESIGNATION.—Designation of
19 high-risk areas shall be consistent with standards and
20 guidelines contained in the land and resource management
21 plan or land use plan for the unit of Federal land for
22 which the designation is being made, except that the Sec-
23 retary concerned may modify such standards and guide-
24 lines to correspond with a specific high-risk area designa-
25 tion.

1 (e) TIME FOR INITIAL DESIGNATIONS.—The first
2 high-risk areas should be designated not later than 60
3 days after the date of the enactment of this Act, but high-
4 risk areas may be designated at any time consistent with
5 subsection (a).

6 (f) DURATION OF DESIGNATION.—The designation of
7 a high-risk area in a State shall expire 20 years after the
8 date of the designation, unless earlier terminated by the
9 Governor of the State.

10 (g) REDESIGNATION.—The expiration of the 20-year
11 period specified in subsection (f) does not prohibit the
12 Governor from redesignating an area of Federal land as
13 a high-risk area under this section if the Governor deter-
14 mines that the Federal land continues to be subject to the
15 terms of this section.

16 (h) RECOGNITION OF VALID AND EXISTING
17 RIGHTS.—The designation of a high-risk area shall not
18 be construed to limit or restrict—

19 (1) access to Federal land included in the area
20 for hunting, fishing, and other related purposes; or

21 (2) valid and existing rights regarding the Fed-
22 eral land.

1 **SEC. 206. USE OF HAZARDOUS FUELS REDUCTION OR FOR-**
2 **EST HEALTH PROJECTS FOR HIGH-RISK**
3 **AREAS.**

4 (a) PROJECT PROPOSALS.—

5 (1) PROPOSALS AUTHORIZED.—Upon designa-
6 tion of a high-risk area in a State, the Governor of
7 the State may provide for the development of pro-
8 posed hazardous fuel reduction projects or forest
9 health projects for the high-risk area.

10 (2) PROJECT CRITERIA.—In preparing a pro-
11 posed hazardous fuel reduction project or a forest
12 health project, the Governor of a State and the Sec-
13 retary concerned shall—

14 (A) take into account managing for rights
15 of way, protection of watersheds, protection of
16 wildlife and endangered species habitat, safe-
17 guarding water resources, and protecting at-
18 risk communities from wildfires; and

19 (B) emphasize activities that thin the for-
20 est to provide the greatest health and longevity
21 of the forest.

22 (b) CONSULTATION.—In preparing a proposed haz-
23 ardous fuel reduction project or a forest health project,
24 the Governor of a State shall consult with county govern-
25 ment from affected counties, and with affected Indian
26 tribes.

1 (c) SUBMISSION AND IMPLEMENTATION.—The Gov-
2 ernor of a State shall submit proposed emergency haz-
3 ardous fuel reduction projects and forest health projects
4 to the Secretary concerned for implementation as provided
5 in section 203.

6 **SEC. 207. MORATORIUM ON USE OF PRESCRIBED FIRE IN**
7 **MARK TWAIN NATIONAL FOREST, MISSOURI,**
8 **PENDING REPORT.**

9 (a) MORATORIUM.—Except as provided in subsection
10 (b), the Secretary of Agriculture may not conduct any pre-
11 scribed fire in Mark Twain National Forest, Missouri,
12 under the Collaborative Forest Landscape Restoration
13 Project until the report required by subsection (c) is sub-
14 mitted to Congress.

15 (b) EXCEPTION FOR WILDFIRE SUPPRESSION.—Sub-
16 section (a) does not prohibit the use of prescribed fire as
17 part of wildfire suppression activities.

18 (c) REPORT REQUIRED.—Not later than one year
19 after the date of the enactment of this Act, the Secretary
20 of Agriculture shall submit to Congress a report con-
21 taining an evaluation of recent and current Forest Service
22 management practices for Mark Twain National Forest,
23 including lands in the National Forest enrolled, or under
24 consideration for enrollment, in the Collaborative Forest
25 Landscape Restoration Project to convert certain lands

1 into shortleaf pine-oak woodlands, to determine the impact
 2 of such management practices on forest health and tree
 3 mortality. The report shall specifically address—

4 (1) the economic costs associated with the fail-
 5 ure to utilize hardwoods cut as part of the Collabora-
 6 tive Forest Landscape Restoration Project and the
 7 subsequent loss of hardwood production from the
 8 treated lands in the long term;

9 (2) the extent of increased tree mortality due to
 10 excessive heat generated by prescribed fires;

11 (3) the impacts to water quality and rate of
 12 water run off due to erosion of the scorched earth
 13 left in the aftermath of the prescribed fires; and

14 (4) a long-term plan for evaluation of the im-
 15 pacts of prescribed fires on lands previously burned
 16 within the Eleven Point Ranger District.

17 **TITLE III—OREGON AND CALI-**
 18 **FORNIA RAILROAD GRANT**
 19 **LANDS TRUST, CONSERVA-**
 20 **TION, AND JOBS**

21 **SEC. 301. SHORT TITLE.**

22 This title may be cited as the “O&C Trust, Conserva-
 23 tion, and Jobs Act”.

24 **SEC. 302. DEFINITIONS.**

25 In this title:

1 (1) AFFILIATES.—The term “Affiliates” has
2 the meaning given such term in part 121 of title 13,
3 Code of Federal Regulations.

4 (2) BOARD OF TRUSTEES.—The term “Board
5 of Trustees” means the Board of Trustees for the
6 Oregon and California Railroad Grant Lands Trust
7 appointed under section 313.

8 (3) COOS BAY WAGON ROAD GRANT LANDS.—
9 The term “Coos Bay Wagon Road Grant lands”
10 means the lands reconveyed to the United States
11 pursuant to the first section of the Act of February
12 26, 1919 (40 Stat. 1179).

13 (4) FISCAL YEAR.—The term “fiscal year”
14 means the Federal fiscal year, October 1 through
15 the next September 30.

16 (5) GOVERNOR.—The term “Governor” means
17 the Governor of the State of Oregon.

18 (6) O&C REGION PUBLIC DOMAIN LANDS.—The
19 term “O&C Region Public Domain lands” means all
20 the land managed by the Bureau of Land Manage-
21 ment in the Salem District, Eugene District,
22 Roseburg District, Coos Bay District, and Medford
23 District in the State of Oregon, excluding the Or-
24 egon and California Railroad Grant lands and the
25 Coos Bay Wagon Road Grant lands.

1 (7) O&C TRUST.—The terms “Oregon and Cali-
2 fornia Railroad Grant Lands Trust” and “O&C
3 Trust” mean the trust created by section 311, which
4 has fiduciary responsibilities to act for the benefit of
5 the O&C Trust counties in the management of O&C
6 Trust lands.

7 (8) O&C TRUST COUNTY.—The term “O&C
8 Trust county” means each of the 18 counties in the
9 State of Oregon that contained a portion of the Or-
10 regon and California Railroad Grant lands as of Jan-
11 uary 1, 2013, each of which are beneficiaries of the
12 O&C Trust.

13 (9) O&C TRUST LANDS.—The term “O&C
14 Trust lands” means the surface estate of the lands
15 over which management authority is transferred to
16 the O&C Trust pursuant to section 311(c)(1). The
17 term does not include any of the lands excluded
18 from the O&C Trust pursuant to section 311(c)(2),
19 transferred to the Forest Service under section 321,
20 or Tribal lands transferred under subtitle D.

21 (10) OREGON AND CALIFORNIA RAILROAD
22 GRANT LANDS.—The term “Oregon and California
23 Railroad Grant lands” means the following lands:

24 (A) All lands in the State of Oregon re-
25 vested in the United States under the Act of

1 June 9, 1916 (39 Stat. 218), regardless of
2 whether the lands are—

3 (i) administered by the Secretary of
4 the Interior, acting through the Bureau of
5 Land Management, pursuant to the first
6 section of the Act of August 28, 1937 (43
7 U.S.C. 1181a); or

8 (ii) administered by the Secretary of
9 Agriculture as part of the National Forest
10 System pursuant to the first section of the
11 Act of June 24, 1954 (43 U.S.C. 1181g).

12 (B) All lands in the State obtained by the
13 Secretary of the Interior pursuant to the land
14 exchanges authorized and directed by section 2
15 of the Act of June 24, 1954 (43 U.S.C. 1181h).

16 (C) All lands in the State acquired by the
17 United States at any time and made subject to
18 the provisions of title II of the Act of August
19 28, 1937 (43 U.S.C. 1181f).

20 (11) RESERVE FUND.—The term “Reserve
21 Fund” means the reserve fund created by the Board
22 of Trustees under section 315(b).

23 (12) SECRETARY CONCERNED.—The term
24 “Secretary concerned” means—

1 (A) the Secretary of the Interior, with re-
2 spect to Oregon and California Railroad Grant
3 lands that are transferred to the management
4 authority of the O&C Trust and, immediately
5 before such transfer, were managed by the Bu-
6 reau of Land Management; and

7 (B) the Secretary of Agriculture, with re-
8 spect to Oregon and California Railroad Grant
9 lands that—

10 (i) are transferred to the management
11 authority of the O&C Trust and, imme-
12 diately before such transfer, were part of
13 the National Forest System; or

14 (ii) are transferred to the Forest
15 Service under section 321.

16 (13) STATE.—The term “State” means the
17 State of Oregon.

18 (14) TRANSITION PERIOD.—The term “transi-
19 tion period” means the three fiscal-year period speci-
20 fied in section 331 following the appointment of the
21 Board of Trustees during which—

22 (A) the O&C Trust is created; and

23 (B) interim funding of the O&C Trust is
24 secured.

1 (15) TRIBAL LANDS.—The term “Tribal lands”
2 means any of the lands transferred to the Cow
3 Creek Band of the Umpqua Tribe of Indians or the
4 Confederated Tribes of Coos, Lower Umpqua, and
5 Siuslaw Indians under subtitle D.

6 **Subtitle A—Trust, Conservation,**
7 **and Jobs**

8 **CHAPTER 1—CREATION AND TERMS OF**
9 **O&C TRUST**

10 **SEC. 311. CREATION OF O&C TRUST AND DESIGNATION OF**
11 **O&C TRUST LANDS.**

12 (a) CREATION.—The Oregon and California Railroad
13 Grant Lands Trust is established effective on October 1
14 of the first fiscal year beginning after the appointment of
15 the Board of Trustees. As management authority over the
16 surface of estate of the O&C Trust lands is transferred
17 to the O&C Trust during the transition period pursuant
18 to section 331, the transferred lands shall be held in trust
19 for the benefit of the O&C Trust counties.

20 (b) TRUST PURPOSE.—The purpose of the O&C
21 Trust is to produce annual maximum sustained revenues
22 in perpetuity for O&C Trust counties by managing the
23 timber resources on O&C Trust lands on a sustained-yield
24 basis subject to the management requirements of section
25 314.

1 (c) DESIGNATION OF O&C TRUST LANDS.—

2 (1) LANDS INCLUDED.—Except as provided in
3 paragraph (2), the O&C Trust lands shall include all
4 of the lands containing the stands of timber de-
5 scribed in subsection (d) that are located, as of Jan-
6 uary 1, 2013, on Oregon and California Railroad
7 Grant lands and O&C Region Public Domain lands.

8 (2) LANDS EXCLUDED.—O&C Trust lands shall
9 not include any of the following Oregon and Cali-
10 fornia Railroad Grant lands and O&C Region Public
11 Domain lands (even if the lands are otherwise de-
12 scribed in subsection (d)):

13 (A) Federal lands within the National
14 Landscape Conservation System as of January
15 1, 2013.

16 (B) Federal lands designated as Areas of
17 Critical Environmental Concern as of January
18 1, 2013.

19 (C) Federal lands that were in the Na-
20 tional Wilderness Preservation System as of
21 January 1, 2013.

22 (D) Federal lands included in the National
23 Wild and Scenic Rivers System of January 1,
24 2013.

1 (E) Federal lands within the boundaries of
2 a national monument, park, or other developed
3 recreation area as of January 1, 2013.

4 (F) Oregon treasures addressed in subtitle
5 C, any portion of which, as of January 1, 2013,
6 consists of Oregon and California Railroad
7 Grant lands or O&C Region Public Domain
8 lands.

9 (G) Tribal lands addressed in subtitle D.

10 (d) COVERED STANDS OF TIMBER.—

11 (1) DESCRIPTION.—The O&C Trust lands con-
12 sist of stands of timber that have previously been
13 managed for timber production or that have been
14 materially altered by natural disturbances since
15 1886. Most of these stands of timber are 80 years
16 old or less, and all of such stands can be classified
17 as having a predominant stand age of 125 years or
18 less.

19 (2) DELINEATION OF BOUNDARIES BY BUREAU
20 OF LAND MANAGEMENT.—The Oregon and Cali-
21 fornia Railroad Grant lands and O&C Region Public
22 Domain lands that, immediately before transfer to
23 the O&C Trust, were managed by the Bureau of
24 Land Management are timber stands that have pre-
25 dominant birth date attributes of 1886 or later, with

1 boundaries that are defined by polygon spatial data
2 layer in and electronic data compilation filed by the
3 Bureau of Land Management pursuant to paragraph
4 (4). Except as provided in paragraph (5), the bound-
5 aries of all timber stands constituting the O&C
6 Trust lands are finally and conclusively determined
7 for all purposes by coordinates in or derived by ref-
8 erence to the polygon spatial data layer prepared by
9 the Bureau of Land Management and filed pursuant
10 to paragraph (4), notwithstanding anomalies that
11 might later be discovered on the ground. The bound-
12 ary coordinates are locatable on the ground by use
13 of global positioning system signals. In cases where
14 the location of the stand boundary is disputed or is
15 inconsistent with paragraph (1), the location of
16 boundary coordinates on the ground shall be, except
17 as otherwise provided in paragraph (5), finally and
18 conclusively determined for all purposes by the direct
19 or indirect use of global positioning system equip-
20 ment with accuracy specification of one meter or
21 less.

22 (3) DELINEATION OF BOUNDARIES BY FOREST
23 SERVICE.—The O&C Trust lands that, immediately
24 before transfer to the O&C Trust, were managed by
25 the Forest Service are timber stands that can be

1 classified as having predominant stand ages of 125
2 years old or less. Within 30 days after the date of
3 the enactment of this Act, the Secretary of Agri-
4 culture shall commence identification of the bound-
5 aries of such stands, and the boundaries of all such
6 stands shall be identified and made available to the
7 Board of Trustees not later than 180 days following
8 the creation of the O&C Trust pursuant to sub-
9 section (a). In identifying the stand boundaries, the
10 Secretary may use geographic information system
11 data, satellite imagery, cadastral survey coordinates,
12 or any other means available within the time al-
13 lowed. The boundaries shall be provided to the
14 Board of Trustees within the time allowed in the
15 form of a spatial data layer from which coordinates
16 can be derived that are locatable on the ground by
17 use of global positioning system signals. Except as
18 provided in paragraph (5), the boundaries of all tim-
19 ber stands constituting the O&C Trust lands are fi-
20 nally and conclusively determined for all purposes by
21 coordinates in or derived by reference to the data
22 provided by the Secretary within the time provided
23 by this paragraph, notwithstanding anomalies that
24 might later be discovered on the ground. In cases
25 where the location of the stand boundary is disputed

1 or inconsistent with paragraph (1), the location of
2 boundary coordinates on the ground shall be, except
3 as otherwise provided in paragraph (5), finally and
4 conclusively determined for all purposes by the
5 boundary coordinates provided by the Secretary as
6 they are located on the ground by the direct or indi-
7 rect use of global positioning system equipment with
8 accuracy specifications of one meter or less. All ac-
9 tions taken by the Secretary under this paragraph
10 shall be deemed to not involve Federal agency action
11 or Federal discretionary involvement or control.

12 (4) DATA AND MAPS.—Copies of the data con-
13 taining boundary coordinates for the stands included
14 in the O&C Trust lands, or from which such coordi-
15 nates are derived, and maps generally depicting the
16 stand locations shall be filed with the Committee on
17 Energy and Natural Resources of the Senate, the
18 Committee on Natural Resources of the House of
19 Representatives, and the office of the Secretary con-
20 cerned. The maps and data shall be filed—

21 (A) not later than 90 days after the date
22 of the enactment of this Act, in the case of the
23 lands identified pursuant to paragraph (2); and

24 (B) not later than 180 days following the
25 creation of the O&C Trust pursuant to sub-

1 section (a), in the case of lands identified pur-
2 suant to paragraph (3).

3 (5) ADJUSTMENT AUTHORITY AND LIMITA-
4 TIONS.—

5 (A) NO IMPACT ON DETERMINING TITLE
6 OR PROPERTY OWNERSHIP BOUNDARIES.—
7 Stand boundaries identified under paragraph
8 (2) or (3) shall not be relied upon for purposes
9 of determining title or property ownership
10 boundaries. If the boundary of a stand identi-
11 fied under paragraph (2) or (3) extends beyond
12 the property ownership boundaries of Oregon
13 and California Railroad Grant lands or O&C
14 Region Public Domain lands, as such property
15 boundaries exist on the date of enactment of
16 this Act, then that stand boundary is deemed
17 adjusted by this subparagraph to coincide with
18 the property ownership boundary.

19 (B) EFFECT OF DATA ERRORS OR INCON-
20 SISTENCIES.—Data errors or inconsistencies
21 may result in parcels of land along property
22 ownership boundaries that are unintentionally
23 omitted from the O&C Trust lands that are
24 identified under paragraph (2) or (3). In order
25 to correct such errors, any parcel of land that

1 satisfies all of the following criteria is hereby
2 deemed to be O&C Trust land:

3 (i) The parcel is within the ownership
4 boundaries of Oregon and California Rail-
5 road Grant lands or O&C Region Public
6 Domain lands on the date of the enact-
7 ment of this Act.

8 (ii) The parcel satisfies the description
9 in paragraph (1) on the date of enactment
10 of this Act.

11 (iii) The parcel is not excluded from
12 the O&C Trust lands pursuant to sub-
13 section (c)(2).

14 (C) NO IMPACT ON LAND EXCHANGE AU-
15 THORITY.—Nothing in this subsection is in-
16 tended to limit the authority of the Trust and
17 the Forest Service to engage in land exchanges
18 between themselves or with owners of non-Fed-
19 eral land as provided elsewhere in this title.

20 **SEC. 312. LEGAL EFFECT OF O&C TRUST AND JUDICIAL RE-**
21 **VIEW.**

22 (a) LEGAL STATUS OF TRUST LANDS.—Subject to
23 the other provisions of this section, all right, title, and in-
24 terest in and to the O&C Trust lands remain in the United
25 States, except that—

1 (1) the Board of Trustees shall have all author-
2 ity to manage the surface estate of the O&C Trust
3 lands and the resources found thereon;

4 (2) actions on the O&C Trust lands shall be
5 deemed to involve no Federal agency action or Fed-
6 eral discretionary involvement or control and the
7 laws of the State shall apply to the surface estate of
8 the O&C Trust lands in the manner applicable to
9 privately owned timberlands in the State; and

10 (3) the O&C Trust shall be treated as the bene-
11 ficial owner of the surface estate of the O&C Trust
12 lands for purposes of all legal proceedings involving
13 the O&C Trust lands.

14 (b) MINERALS.—

15 (1) IN GENERAL.—Mineral and other sub-
16 surface rights in the O&C Trust lands are retained
17 by the United States or other owner of such rights
18 as of the date on which management authority over
19 the surface estate of the lands are transferred to the
20 O&C Trust.

21 (2) ROCK AND GRAVEL.—

22 (A) USE AUTHORIZED; PURPOSE.—For
23 maintenance or construction on the road system
24 under the control of the O&C Trust or for non-

1 Federal lands intermingled with O&C Trust
2 lands, the Board of Trustees may—

3 (i) utilize rock or gravel found within
4 quarries in existence immediately before
5 the date of the enactment of this Act on
6 any Oregon and California Railroad Grant
7 lands and O&C Region Public Domain
8 lands, excluding those lands designated
9 under subtitle C or transferred under sub-
10 title D; and

11 (ii) construct new quarries on O&C
12 Trust lands, except that any quarry so
13 constructed may not exceed 5 acres.

14 (B) EXCEPTION.—The Board of Trustees
15 shall not construct new quarries on any of the
16 lands transferred to the Forest Service under
17 section 321 or lands designated under subtitle
18 D.

19 (c) ROADS.—

20 (1) IN GENERAL.—Except as provided in sub-
21 section (b), the Board of Trustees shall assume au-
22 thority and responsibility over, and have authority to
23 use, all roads and the road system specified in the
24 following subparagraphs:

1 (A) All roads and road systems on the Or-
2 egon and California Railroad and Grant lands
3 and O&C Region Public Domain lands owned or
4 administered by the Bureau of Land Manage-
5 ment immediately before the date of the enact-
6 ment of this Act, except that the Secretary of
7 Agriculture shall assume the Secretary of Inte-
8 rior's obligations for pro-rata maintenance ex-
9 pense and road use fees under reciprocal right-
10 of-way agreements for those lands transferred
11 to the Forest Service under section 321. All of
12 the lands transferred to the Forest Service
13 under section 321 shall be considered as part of
14 the tributary area used to calculate pro-rata
15 maintenance expense and road use fees.

16 (B) All roads and road systems owned or
17 administered by the Forest Service immediately
18 before the date of the enactment of this Act
19 and subsequently included within the bound-
20 aries of the O&C Trust lands.

21 (C) All roads later added to the road sys-
22 tem for management of the O&C Trust lands.

23 (2) LANDS TRANSFERRED TO FOREST SERV-
24 ICE.—The Secretary of Agriculture shall assume the
25 obligations of the Secretary of Interior for pro-rata

1 maintenance expense and road use fees under recip-
2 rocal rights-of-way agreements for those Oregon and
3 California Railroad Grant lands or O&C Region
4 Public Domain lands transferred to the Forest Serv-
5 ice under section 321.

6 (3) COMPLIANCE WITH CLEAN WATER ACT.—

7 All roads used, constructed, or reconstructed under
8 the jurisdiction of the O&C Trust must comply with
9 requirements of the Federal Water Pollution Control
10 Act (33 U.S.C. 1251 et seq.) applicable to private
11 lands through the use of Best Management Prac-
12 tices under the Oregon Forest Practices Act.

13 (d) PUBLIC ACCESS.—

14 (1) IN GENERAL.—Subject to paragraph (2),
15 public access to O&C Trust lands shall be preserved
16 consistent with the policies of the Secretary con-
17 cerned applicable to the O&C Trust lands as of the
18 date on which management authority over the sur-
19 face estate of the lands is transferred to the O&C
20 Trust.

21 (2) RESTRICTIONS.—The Board of Trustees
22 may limit or control public access for reasons of
23 public safety or to protect the resources on the O&C
24 Trust lands.

1 (e) LIMITATIONS.—The assets of the O&C Trust
2 shall not be subject to the creditors of an O&C Trust coun-
3 ty, or otherwise be distributed in an unprotected manner
4 or be subject to anticipation, encumbrance, or expenditure
5 other than for a purpose for which the O&C Trust was
6 created.

7 (f) REMEDY.—An O&C Trust county shall have all
8 of the rights and remedies that would normally accrue to
9 a beneficiary of a trust. An O&C Trust county shall pro-
10 vide the Board of Trustees, the Secretary concerned, and
11 the Attorney General with not less than 60 days notice
12 of an intent to sue to enforce the O&C Trust county's
13 rights under the O&C Trust.

14 (g) JUDICIAL REVIEW.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), judicial review of any provision of this
17 title shall be sought in the United States Court of
18 Appeals for the District of Columbia Circuit. Parties
19 seeking judicial review of the validity of any provi-
20 sion of this title must file suit within 90 days after
21 the date of the enactment of this Act and no pre-
22 liminary injunctive relief or stays pending appeal will
23 be permitted. If multiple cases are filed under this
24 paragraph, the Court shall consolidate the cases.

1 The Court must rule on any action brought under
2 this paragraph within 180 days.

3 (2) DECISIONS OF BOARD OF TRUSTEES.—De-
4 cisions made by the Board of Trustees shall be sub-
5 ject to judicial review only in an action brought by
6 an O&C County, except that nothing in this title
7 precludes bringing a legal claim against the Board
8 of Trustees that could be brought against a private
9 landowner for the same action.

10 **SEC. 313. BOARD OF TRUSTEES.**

11 (a) APPOINTMENT AUTHORIZATION.—Subject to the
12 conditions on appointment imposed by this section, the
13 Governor is authorized to appoint the Board of Trustees
14 to administer the O&C Trust and O&C Trust lands. Ap-
15 pointments by the Governor shall be made within 60 days
16 after the date of the enactment of this Act.

17 (b) MEMBERS AND ELIGIBILITY.—

18 (1) NUMBER.—Subject to subsection (c), the
19 Board of Trustees shall consist of seven members.

20 (2) RESIDENCY REQUIREMENT.—Members of
21 the Board of Trustees must reside within an O&C
22 Trust county.

23 (3) GEOGRAPHICAL REPRESENTATION.—To the
24 extent practicable, the Governor shall ensure broad
25 geographic representation among the O&C Trust

1 counties in appointing members to the Board of
2 Trustees.

3 (c) COMPOSITION.—The Board of Trustees shall in-
4 clude the following members:

5 (1)(A) Two forestry and wood products rep-
6 resentatives, consisting of—

7 (i) one member who represents the com-
8 mercial timber, wood products, or milling indus-
9 tries and who represents an Oregon-based com-
10 pany with more than 500 employees, taking
11 into account its affiliates, that has submitted a
12 bid for a timber sale on the Oregon and Cali-
13 fornia Railroad Grant lands, O&C Region Pub-
14 lic Domain lands, Coos Bay Wagon Road Grant
15 lands, or O&C Trust lands in the preceding five
16 years; and

17 (ii) one member who represents the com-
18 mercial wood products or milling industries and
19 who represents an Oregon-based company with
20 500 or fewer employees, taking into account its
21 affiliates, that has submitted a bid for a timber
22 sale on the Oregon and California Railroad
23 Grant lands, O&C Region Public Domain lands,
24 Coos Bay Wagon Road Grant lands, or O&C
25 Trust lands in the preceding five years.

1 (B) At least one of the two representatives se-
2 lected in this paragraph must own commercial forest
3 land that is adjacent to the O&C Trust lands and
4 from which the representative has not exported un-
5 processed timber in the preceding five years.

6 (2) One representative of the general public
7 who has professional experience in one or more of
8 the following fields:

9 (A) Business management.

10 (B) Law.

11 (C) Accounting.

12 (D) Banking.

13 (E) Labor management.

14 (F) Transportation.

15 (G) Engineering.

16 (H) Public policy.

17 (3) One representative of the science commu-
18 nity who, at a minimum, holds a Doctor of Philos-
19 ophy degree in wildlife biology, forestry, ecology, or
20 related field and has published peer-reviewed aca-
21 demic articles in the representative's field of exper-
22 tise.

23 (4) Three governmental representatives, con-
24 sisting of—

1 (A) two members who are serving county
2 commissioners of an O&C Trust county and
3 who are nominated by the governing bodies of
4 a majority of the O&C Trust counties and ap-
5 proved by the Governor, except that the two
6 representatives may not be from the same coun-
7 ty; and

8 (B) one member who holds State-wide
9 elected office (or is a designee of such a person)
10 or who represents a federally recognized Indian
11 tribe or tribes within one or more O&C Trust
12 counties.

13 (d) TERM, INITIAL APPOINTMENT, VACANCIES.—

14 (1) TERM.—Except in the case of initial ap-
15 pointments, members of the Board of Trustees shall
16 serve for five-year terms and may be reappointed for
17 one consecutive term.

18 (2) INITIAL APPOINTMENTS.—In making the
19 first appointments to the Board of Trustees, the
20 Governor shall stagger initial appointment lengths so
21 that two members have three-year terms, two mem-
22 bers have four-year terms, and three members have
23 a full five-year term.

24 (3) VACANCIES.—Any vacancy on the Board of
25 Trustees shall be filled within 45 days by the Gov-

1 error for the unexpired term of the departing mem-
2 ber.

3 (4) BOARD OF TRUSTEES MANAGEMENT
4 COSTS.—Members of the Board of Trustees may re-
5 ceive annual compensation from the O&C Trust at
6 a rate not to exceed 50 percent of the average an-
7 nual salary for commissioners of the O&C Trust
8 counties for that year.

9 (e) CHAIRPERSON AND OPERATIONS.—

10 (1) CHAIRPERSON.—A majority of the Board of
11 Trustees shall select the chairperson for the Board
12 of Trustees each year.

13 (2) MEETINGS.—The Board of Trustees shall
14 establish proceedings to carry out its duties. The
15 Board shall meet at least quarterly. Except for
16 meetings substantially involving personnel and con-
17 tractual decisions, all meetings of the Board shall
18 comply with the public meetings law of the State.

19 (f) QUORUM AND DECISION-MAKING.—

20 (1) QUORUM.—A quorum shall consist of five
21 members of the Board of Trustees. The presence of
22 a quorum is required to constitute an official meet-
23 ing of the board of trustees to satisfy the meeting
24 requirement under subsection (e)(2).

1 (2) DECISIONS.—All actions and decisions by
2 the Board of Trustees shall require approval by a
3 majority of members.

4 (g) ANNUAL AUDIT.—Financial statements regard-
5 ing operation of the O&C Trust shall be independently
6 prepared and audited annually for review by the O&C
7 Trust counties, Congress, and the State.

8 **SEC. 314. MANAGEMENT OF O&C TRUST LANDS.**

9 (a) IN GENERAL.—Except as otherwise provided in
10 this title, the O&C Trust lands will be managed by the
11 Board of Trustees in compliance with all Federal and
12 State laws in the same manner as such laws apply to pri-
13 vate forest lands.

14 (b) TIMBER SALE PLANS.—The Board of Trustees
15 shall approve and periodically update management and
16 sale plans for the O&C Trust lands consistent with the
17 purpose specified in section 311(b). The Board of Trust-
18 ees may defer sale plans during periods of depressed tim-
19 ber markets if the Board of Trustees, in its discretion,
20 determines that such delay until markets improve is finan-
21 cially prudent and in keeping with its fiduciary obligation
22 to the O&C Trust counties.

23 (c) STAND ROTATION.—

24 (1) 100–120 YEAR ROTATION.—The Board of
25 Trustees shall manage not less than 50 percent of

1 the harvestable acres of the O&C Trust lands on a
2 100–120 year rotation. The acreage subject to 100–
3 120 year management shall be geographically dis-
4 persed across the O&C Trust lands in a manner that
5 the Board of Trustees, in its discretion, determines
6 will contribute to aquatic and terrestrial ecosystem
7 values.

8 (2) BALANCE.—The balance of the harvestable
9 acreage of the O&C Trust lands shall be managed
10 on any rotation age the Board of Trustees, in its
11 discretion and in compliance with applicable State
12 law, determines will best satisfy its fiduciary obliga-
13 tion to provide revenue to the O&C Trust counties.

14 (3) THINNING.—Nothing in this subsection is
15 intended to limit the ability of the Board of Trustees
16 to decide, in its discretion, to thin stands of timber
17 on O&C Trust lands.

18 (d) SALE TERMS.—

19 (1) IN GENERAL.—Subject to paragraphs (2)
20 and (3), the Board of Trustees is authorized to es-
21 tablish the terms for sale contracts of timber or
22 other forest products from O&C Trust lands.

23 (2) SET ASIDE.—The Board of Trustees shall
24 establish a program consistent with the program of
25 the Bureau of Land Management under a March 10,

1 1959 Memorandum of Understanding, as amended,
2 regarding calculation of shares and sale of timber
3 set aside for purchase by business entities with 500
4 or fewer employees and consistent with the regula-
5 tions in part 121 of title 13, Code of Federal Regu-
6 lations applicable to timber sale set asides, except
7 that existing shares in effect on the date of enact-
8 ment of this Act shall apply until the next scheduled
9 recomputation of shares. In implementing its pro-
10 gram that is consistent with such Memorandum of
11 Understanding, the Board of Trustees shall utilize
12 the Timber Sale Procedure Handbook and other ap-
13 plicable procedures of the Bureau of Land Manage-
14 ment, including the Operating Procedures for Con-
15 ducting the Five-Year Recomputation of Small Busi-
16 ness Share Percentages in effect on January 1,
17 2013.

18 (3) COMPETITIVE BIDDING.—The Board of
19 Trustees must sell timber on a competitive bid basis.
20 No less than 50 percent of the total volume of tim-
21 ber sold by the Board of Trustees each year shall be
22 sold by oral bidding consistent with practices of the
23 Bureau of Land Management as of January 1,
24 2013.

25 (e) PROHIBITION ON EXPORT.—

1 (1) IN GENERAL.—As a condition on the sale of
2 timber or other forest products from O&C Trust
3 lands, unprocessed timber harvested from O&C
4 Trust lands may not be exported.

5 (2) VIOLATIONS.—Any person who knowingly
6 exports unprocessed timber harvested from O&C
7 Trust lands, who knowingly provides such unproc-
8 essed timber for export by another person, or know-
9 ingly sells timber harvested from O&C Trust lands
10 to a person who is disqualified from purchasing tim-
11 ber from such lands pursuant to this section shall be
12 disqualified from purchasing timber or other forest
13 products from O&C Trust lands or from Federal
14 lands administered under this subtitle. Any person
15 who uses unprocessed timber harvested from O&C
16 Trust lands in substitution for exported unprocessed
17 timber originating from private lands shall be dis-
18 qualified from purchasing timber or other forest
19 products from O&C Trust lands or from Federal
20 lands administered under this subtitle.

21 (3) UNPROCESSED TIMBER DEFINED.—In this
22 subsection, the term “unprocessed timber” has the
23 meaning given such term in section 493(9) of the
24 Forest Resources Conservation and Shortage Relief
25 Act of 1990 (16 U.S.C. 620e(9)).

1 (f) INTEGRATED PEST, DISEASE, AND WEED MAN-
2 AGEMENT PLAN.—The Board of Trustees shall develop an
3 integrated pest and vegetation management plan to assist
4 forest managers in prioritizing and minimizing the use of
5 pesticides and herbicides approved by the Environmental
6 Protection Agency and used in compliance with the Or-
7 egon Forest Practices Act. The plan shall optimize the
8 ability of the O&C Trust to re-establish forest stands after
9 harvest in compliance with the Oregon Forest Practices
10 Act and to create diverse early seral stage forests. The
11 plan shall allow for the eradication, containment and sup-
12 pression of disease, pests, weeds and noxious plants, and
13 invasive species as found on the State Noxious Weed List
14 and prioritize ground application of herbicides and pes-
15 ticides to the greatest extent practicable. The plan shall
16 be completed before the start of the second year of the
17 transition period. The planning process shall be open to
18 the public and the Board of Trustees shall hold not less
19 than two public hearings on the proposed plan before final
20 adoption.

21 (g) ACCESS TO LANDS TRANSFERRED TO FOREST
22 SERVICE.—Persons acting on behalf of the O&C Trust
23 shall have a right of timely access over lands transferred
24 to the Forest Service under section 321 and Tribal lands
25 transferred under subtitle D as is reasonably necessary for

1 the Board of Trustees to carry out its management activi-
2 ties with regard to the O&C Trust lands and the O&C
3 Trust to satisfy its fiduciary duties to O&C counties.

4 (h) HARVEST AREA TREE AND RETENTION RE-
5 QUIREMENTS.—

6 (1) IN GENERAL.—The O&C Trust lands shall
7 include harvest area tree and retention requirements
8 consistent with State law.

9 (2) USE OF OLD GROWTH DEFINITION.—To the
10 greatest extent practicable, and at the discretion of
11 the Board of Trustees, old growth, as defined by the
12 Old Growth Review Panel created by section 324,
13 shall be used to meet the retention requirements ap-
14 plicable under paragraph (1).

15 (i) RIPARIAN AREA MANAGEMENT.—

16 (1) IN GENERAL.—The O&C Trust lands shall
17 be managed with timber harvesting limited in ripar-
18 ian areas as follows:

19 (A) STREAMS.—For all fish bearing
20 streams and all perennial non-fish-bearing
21 streams, there shall be no removal of timber
22 within a distance equal to the height of one site
23 potential tree on both sides of the stream chan-
24 nel. For intermittent, non-fish-bearing streams,
25 there shall be no removal of timber within a

1 distance equal to one-half the height of a site
2 potential tree on both sides of the stream chan-
3 nel. For purposes of this subparagraph, the
4 stream channel boundaries are the lines of ordi-
5 nary high water.

6 (B) LARGER LAKES, PONDS AND RES-
7 ERVOIRS.—For all lakes, ponds, and reservoirs
8 with surface area larger than one quarter of
9 one acre, there shall be no removal of timber
10 within a distance equal to the height of one site
11 potential tree from the line of ordinary high
12 water of the water body.

13 (C) SMALL PONDS AND NATURAL WET-
14 LANDS, SPRINGS AND SEEPS.—For all ponds
15 with surface area one quarter acre or less, and
16 for all natural wetlands, springs and seeps,
17 there shall be no removal of timber within the
18 area dominated by riparian vegetation.

19 (2) MEASUREMENTS.—For purposes of para-
20 graph (1), all distances shall be measured along
21 slopes, and all site potential tree heights shall be av-
22 erage height at maturity of the dominant species of
23 conifer determined at a scale no finer than the appli-
24 cable fifth field watershed.

1 (3) RULES OF CONSTRUCTION.—Nothing in
2 paragraph (1) shall be construed—

3 (A) to prohibit the falling or placement of
4 timber into streams to create large woody de-
5 bris for the benefit of aquatic ecosystems; or

6 (B) to prohibit the falling of trees within
7 riparian areas as may be reasonably necessary
8 for safety or operational reasons in areas adja-
9 cent to the riparian areas, or for road construc-
10 tion or maintenance pursuant to section
11 312(c)(3).

12 (j) FIRE PROTECTION AND EMERGENCY RE-
13 SPONSE.—

14 (1) RECIPROCAL FIRE PROTECTION AGREE-
15 MENTS.—

16 (A) CONTINUATION OF AGREEMENTS.—
17 Subject to subparagraphs (B), (C), and (D),
18 any reciprocal fire protection agreement be-
19 tween the State or any other entity and the
20 Secretary concerned with regard to Oregon and
21 California Railroad Grant lands and O&C Re-
22 gion Public Domain lands in effect on the date
23 of the enactment of this Act shall remain in
24 place for a period of ten years after such date

1 unless earlier terminated by the State or other
2 entity.

3 (B) ASSUMPTION OF BLM RIGHTS AND DU-
4 TIES.—The Board of Trustees shall exercise the
5 rights and duties of the Bureau of Land Man-
6 agement under the agreements described in
7 subparagraph (A), except as such rights and
8 duties might apply to Tribal lands under sub-
9 title D.

10 (C) EFFECT OF EXPIRATION OF PERIOD.—
11 Following the expiration of the ten-year period
12 under subparagraph (A), the Board of Trustees
13 shall continue to provide for fire protection of
14 the Oregon and California Railroad Grant lands
15 and O&C Region Public Domain lands, includ-
16 ing those transferred to the Forest Service
17 under section 331, through continuation of the
18 reciprocal fire protection agreements, new coop-
19 erative agreements, or by any means otherwise
20 permitted by law. The means selected shall be
21 based on the review by the Board of Trustees
22 of whether the reciprocal fire protection agree-
23 ments were effective in protecting the lands
24 from fire.

1 (D) EMERGENCY RESPONSE.—Nothing in
2 this paragraph shall prevent the Secretary of
3 Agriculture from an emergency response to a
4 fire on the O&C Trust lands or lands trans-
5 ferred to the Forest Service under section 321.

6 (2) EMERGENCY RESPONSE TO FIRE.—Subject
7 to paragraph (1), if the Secretary of Agriculture de-
8 termines that fire on any of the lands transferred
9 under section 321 is burning uncontrolled or the
10 Secretary, the Board of Trustees, or contracted
11 party does not have readily and immediately avail-
12 able personnel and equipment to control or extin-
13 guish the fire, the Secretary, or any forest protective
14 association or agency under contract or agreement
15 with the Secretary or the Board of Trustees for the
16 protection of forestland against fire, shall summarily
17 and aggressively abate the nuisance thus controlling
18 and extinguishing the fire.

19 (k) NORTHERN SPOTTED OWL.—So long as the O&C
20 Trust maintains the 100–120 year rotation on 50 percent
21 of the harvestable acres required in subsection (c), the sec-
22 tion 321 lands representing the best quality habitat for
23 the owl are transferred to the Forest Service, and the O&C
24 Trust protects currently occupied northern spotted owl
25 nest sites consistent with the forest practices in the Or-

1 egon Forest Practices Act, management of the O&C Trust
2 land by the Board of Trustees shall be considered to com-
3 ply with section 9 of Public Law 93–205 (16 U.S.C. 1538)
4 for the northern spotted owl. A currently occupied north-
5 ern spotted owl nest site shall be considered abandoned
6 if there are no northern spotted owl responses following
7 three consecutive years of surveys using the Protocol for
8 Surveying Management Activities that May Impact North-
9 ern Spotted Owls dated February 2, 2013.

10 **SEC. 315. DISTRIBUTION OF REVENUES FROM O&C TRUST**

11 **LANDS.**

12 (a) ANNUAL DISTRIBUTION OF REVENUES.—

13 (1) TIME FOR DISTRIBUTION; USE.—Payments
14 to each O&C Trust county shall be made available
15 to the general fund of the O&C Trust county as soon
16 as practicable following the end of each fiscal year,
17 to be used as are other unrestricted county funds.

18 (2) AMOUNT.—The amount paid to an O&C
19 Trust county in relation to the total distributed to
20 all O&C Trust counties for a fiscal year shall be
21 based on the proportion that the total assessed value
22 of the Oregon and California Railroad Grant lands
23 in each of the O&C Trust counties for fiscal year
24 1915 bears to the total assessed value of all of the
25 Oregon and California Railroad Grant lands in the

1 State for that same fiscal year. However, for the
2 purposes of this subsection the portion of the re-
3 vested Oregon and California Railroad Grant lands
4 in each of the O&C Trust counties that was not as-
5 sessed for fiscal year 1915 shall be deemed to have
6 been assessed at the average assessed value of the
7 Oregon and California Railroad Grant lands in the
8 county.

9 (3) LIMITATION.—After the fifth payment made
10 under this subsection, the payment to an O&C Trust
11 county for a fiscal year shall not exceed 110 percent
12 of the previous year's payment to the O&C Trust
13 county, adjusted for inflation based on the consumer
14 price index applicable to the geographic area in
15 which the O&C Trust counties are located.

16 (b) RESERVE FUND.—

17 (1) ESTABLISHMENT OF RESERVE FUND.—The
18 Board of Trustees shall generate and maintain a re-
19 serve fund.

20 (2) DEPOSITS TO RESERVE FUND.—Within 10
21 years after creation of the O&C Trust or as soon
22 thereafter as is practicable, the Board of Trustees
23 shall establish and seek to maintain an annual bal-
24 ance of \$125,000,000 in the Reserve Fund, to be de-
25 rived from revenues generated from management ac-

1 activities involving O&C Trust lands. All annual reve-
2 nues generated in excess of operating costs and pay-
3 ments to O&C Trust counties required by subsection
4 (a) and payments into the Conservation Fund as
5 provided in subsection (c) shall be deposited in the
6 Reserve Fund.

7 (3) EXPENDITURES FROM RESERVE FUND.—

8 The Board of Trustees shall use amounts in the Re-
9 serve Fund only—

10 (A) to pay management and administrative
11 expenses or capital improvement costs on O&C
12 Trust lands; and

13 (B) to make payments to O&C Trust coun-
14 ties when payments to the counties under sub-
15 section (a) are projected to be 90 percent or
16 less of the previous year's payments.

17 (c) O&C TRUST CONSERVATION FUND.—

18 (1) ESTABLISHMENT OF CONSERVATION
19 FUND.—The Board of Trustees shall use a portion
20 of revenues generated from activity on the O&C
21 Trust lands, consistent with paragraph (2), to estab-
22 lish and maintain a O&C Trust Conservation Fund.
23 The O&C Trust Conservation Fund shall include no
24 Federal appropriations.

1 (2) REVENUES.—Following the transition pe-
2 riod, five percent of the O&C Trust’s annual net op-
3 erating revenue, after deduction of all management
4 costs and expenses, including the payment required
5 under section 317, shall be deposited to the O&C
6 Trust Conservation Fund.

7 (3) EXPENDITURES FROM CONSERVATION
8 FUND.—The Board of Trustees shall use amounts
9 from the O&C Trust Conservation Fund only—

10 (A) to fund the voluntary acquisition of
11 conservation easements from willing private
12 landowners in the State;

13 (B) to fund watershed restoration, remedi-
14 ation and enhancement projects within the
15 State; or

16 (C) to contribute to balancing values in a
17 land exchange with willing private landowners
18 proposed under section 323(b), if the land ex-
19 change will result in a net increase in ecosystem
20 benefits for fish, wildlife, or rare native plants.

21 **SEC. 316. LAND EXCHANGE AUTHORITY.**

22 (a) AUTHORITY.—Subject to approval by the Sec-
23 retary concerned, the Board of Trustees may negotiate
24 proposals for land exchanges with owners of lands adja-
25 cent to O&C Trust lands in order to create larger contig-

1 uous blocks of land under management by the O&C Trust
2 to facilitate resource management, to improve conserva-
3 tion value of such lands, or to improve the efficiency of
4 management of such lands.

5 (b) APPROVAL REQUIRED; CRITERIA.—The Sec-
6 retary concerned may approve a land exchange proposed
7 by the Board of Trustees administratively if the exchange
8 meets the following criteria:

9 (1) The non-Federal lands are completely with-
10 in the State.

11 (2) The non-Federal lands have high timber
12 production value, or are necessary for more efficient
13 or effective management of adjacent or nearby O&C
14 Trust lands.

15 (3) The non-Federal lands have equal or great-
16 er value to the O&C Trust lands proposed for ex-
17 change.

18 (4) The proposed exchange is reasonably likely
19 to increase the net income to the O&C Trust coun-
20 ties over the next 20 years and not decrease the net
21 income to the O&C Trust counties over the next 10
22 years.

23 (c) ACREAGE LIMITATION.—The Secretary concerned
24 shall not approve land exchanges under this section that,
25 taken together with all previous exchanges involving the

1 O&C Trust lands, have the effect of reducing the total
2 acreage of the O&C Trust lands by more than five percent
3 from the total acreage to be designated as O&C Trust land
4 under section 311(c)(1).

5 (d) INAPPLICABILITY OF CERTAIN LAWS.—Section 3
6 of the Oregon Public Lands Transfer and Protection Act
7 of 1998 (Public Law 105–321; 112 Stat. 3022), the Fed-
8 eral Land Policy and Management Act of 1976 (43 U.S.C.
9 1701 et. seq.), including the amendments made by the
10 Federal Land Exchange Facilitation Act of 1988 (Public
11 Law 100–409; 102 Stat. 1086), the Act of March 20,
12 1922 (16 U.S.C. 485, 486), and the Act of March 1, 1911
13 (commonly known as the Weeks Act; 16 U.S.C. 480 et
14 seq.) shall not apply to the land exchange authority pro-
15 vided by this section.

16 (e) EXCHANGES WITH FOREST SERVICE.—

17 (1) EXCHANGES AUTHORIZED.—The Board of
18 Trustees is authorized to engage in land exchanges
19 with the Forest Service if approved by the Secretary
20 pursuant to section 323(c).

21 (2) MANAGEMENT OF EXCHANGED LANDS.—

22 Following completion of a land exchange under para-
23 graph (1), the management requirements applicable
24 to the newly acquired lands by the O&C Trust or the
25 Forest Service shall be the same requirements under

1 this subtitle applicable to the other lands that are
2 managed by the O&C Board or the Forest Service.

3 **SEC. 317. PAYMENTS TO THE UNITED STATES TREASURY.**

4 As soon as practicable after the end of the third fiscal
5 year of the transition period and in each of the subsequent
6 seven fiscal years, the O&C Trust shall submit a payment
7 of \$10,000,000 to the United States Treasury.

8 **CHAPTER 2—TRANSFER OF CERTAIN**
9 **LANDS TO FOREST SERVICE**

10 **SEC. 321. TRANSFER OF CERTAIN OREGON AND CALI-**
11 **FORNIA RAILROAD GRANT LANDS TO FOREST**
12 **SERVICE.**

13 (a) **TRANSFER REQUIRED.**—The Secretary of the In-
14 terior shall transfer administrative jurisdiction over all Or-
15 egon and California Railroad Grant lands and O&C Re-
16 gion Public Domain lands not designated as O&C Trust
17 lands by subparagraphs (A) through (F) of section
18 311(c)(1), including those lands excluded by section
19 311(c)(2), to the Secretary of Agriculture for inclusion in
20 the National Forest System and administration by the
21 Forest Service as provided in section 322.

22 (b) **EXCEPTION.**—This section does not apply to
23 Tribal lands transferred under subtitle D.

1 **SEC. 322. MANAGEMENT OF TRANSFERRED LANDS BY FOR-**
2 **EST SERVICE.**

3 (a) ASSIGNMENT TO EXISTING NATIONAL FOR-
4 ESTS.—To the greatest extent practicable, management
5 responsibilities for the lands transferred under section 321
6 shall be assigned to the unit of the National Forest Sys-
7 tem geographically closest to the transferred lands. The
8 Secretary of Agriculture shall have ultimate decision-mak-
9 ing authority, but shall assign the transferred lands to a
10 unit not later than the applicable transfer date provided
11 in the transition period.

12 (b) APPLICATION OF NORTHWEST FOREST PLAN.—

13 (1) IN GENERAL.—Except as provided in para-
14 graph (2), the lands transferred under section 321
15 shall be managed under the Northwest Forest Plan
16 and shall retain Northwest Forest Plan land use
17 designations until or unless changed in the manner
18 provided by Federal laws applicable to the adminis-
19 tration and management of the National Forest Sys-
20 tem.

21 (2) EXCEPTION FOR CERTAIN DESIGNATED
22 LANDS.—The lands excluded from the O&C Trust by
23 subparagraphs (A) through (F) of section 311(c)(2)
24 and transferred to the Forest Service under section
25 321 shall be managed as provided by Federal laws
26 applicable to the lands.

1 (c) PROTECTION OF OLD GROWTH.—Old growth, as
2 defined by the Old Growth Review Panel pursuant to rule-
3 making conducted in accordance with section 553 of title
4 5, United States Code, shall not be harvested by the For-
5 est Service on lands transferred under section 321.

6 (d) EMERGENCY RESPONSE TO FIRE.—Subject to
7 section 314(i), if the Secretary of Agriculture determines
8 that fire on any of the lands transferred under section 321
9 is burning uncontrolled or the Secretary or contracted
10 party does not have readily and immediately available per-
11 sonnel and equipment to control or extinguish the fire, the
12 Secretary, or any forest protective association or agency
13 under contract or agreement with the Secretary for the
14 protection of forestland against fire, and within whose pro-
15 tection area the fire exists, shall summarily and aggres-
16 sively abate the nuisance thus controlling and extin-
17 guishing the fire.

18 **SEC. 323. MANAGEMENT EFFICIENCIES AND EXPEDITED**
19 **LAND EXCHANGES.**

20 (a) LAND EXCHANGE AUTHORITY.—The Secretary
21 of Agriculture may conduct land exchanges involving lands
22 transferred under section 321, other than the lands ex-
23 cluded from the O&C Trust by subparagraphs (A) through
24 (F) of section 311(c)(2), in order create larger contiguous
25 blocks of land under management of the Secretary to fa-

1 cilitate resource management, to improve conservation
2 value of such lands, or to improve the efficiency of man-
3 agement of such lands.

4 (b) CRITERIA FOR EXCHANGES WITH NON-FEDERAL
5 OWNERS.—The Secretary of Agriculture may conduct a
6 land exchange administratively under this section with a
7 non-Federal owner (other than the O&C Trust) if the land
8 exchange meets the following criteria:

9 (1) The non-Federal lands are completely with-
10 in the State.

11 (2) The non-Federal lands have high wildlife
12 conservation or recreation value or the exchange is
13 necessary to increase management efficiencies of
14 lands administered by the Forest Service for the
15 purposes of the National Forest System.

16 (3) The non-Federal lands have equal or great-
17 er value to the Federal lands purposed for exchange
18 or a balance of values can be achieved—

19 (A) with a grant of funds provided by the
20 O&C Trust pursuant to section 315(c); or

21 (B) from other sources.

22 (c) CRITERIA FOR EXCHANGES WITH O&C TRUST.—
23 The Secretary of Agriculture may conduct land exchanges
24 with the Board of Trustees administratively under this
25 subsection, and such an exchange shall be deemed to not

1 involve any Federal action or Federal discretionary in-
2 volvement or control if the land exchange with the O&C
3 Trust meets the following criteria:

4 (1) The O&C Trust lands to be exchanged have
5 high wildlife value or ecological value or the ex-
6 change would facilitate resource management or oth-
7 erwise contribute to the management efficiency of
8 the lands administered by the Forest Service.

9 (2) The exchange is requested or approved by
10 the Board of Trustees for the O&C Trust and will
11 not impair the ability of the Board of Trustees to
12 meet its fiduciary responsibilities.

13 (3) The lands to be exchanged by the Forest
14 Service do not contain stands of timber meeting the
15 definition of old growth established by the Old
16 Growth Review Panel pursuant to section 324.

17 (4) The lands to be exchanged are equal in
18 acreage.

19 (d) ACREAGE LIMITATION.—The Secretary of Agri-
20 culture shall not approve land exchanges under this sec-
21 tion that, taken together with all previous exchanges in-
22 volving the lands described in subsection (a), have the ef-
23 fect of reducing the total acreage of such lands by more
24 than five percent from the total acreage originally trans-
25 ferred to the Secretary.

1 (e) INAPPLICABILITY OF CERTAIN LAWS.—Section 3
2 of the Oregon Public Lands Transfer and Protection Act
3 of 1998 (Public Law 105–321; 112 Stat. 3022), the Fed-
4 eral Land Policy and Management Act of 1976 (43 U.S.C.
5 1701 et. seq.), including the amendments made by the
6 Federal Land Exchange Facilitation Act of 1988 (Public
7 Law 100–409; 102 Stat. 1086), the Act of March 20,
8 1922 (16 U.S.C. 485, 486), and the Act of March 1, 1911
9 (commonly known as the Weeks Act; 16 U.S.C. 480 et
10 seq.) shall not apply to the land exchange authority pro-
11 vided by this section.

12 **SEC. 324. REVIEW PANEL AND OLD GROWTH PROTECTION.**

13 (a) APPOINTMENT; MEMBERS.—Within 60 days after
14 the date of the enactment of this Act the Secretary of Ag-
15 riculture shall appoint an Old Growth Review Panel con-
16 sisting of five members. At a minimum, the members must
17 hold a Doctor of Philosophy degree in wildlife biology, for-
18 estry, ecology, or related field and published peer-reviewed
19 academic articles in their field of expertise.

20 (b) PURPOSE OF REVIEW.—Members of the Old
21 Growth Review Panel shall review existing, published,
22 peer-reviewed articles in relevant academic journals and
23 establish a definition or definitions of old growth as it ap-
24 plies to the ecologically, geographically and climato-
25 logically unique Oregon and California Railroad Grant

1 lands and O&C Region Public Domain lands managed by
2 the O&C Trust or the Forest Service only. The definition
3 or definitions shall bear no legal force, shall not be used
4 as a precedent for, and shall not apply to any lands other
5 than the Oregon and California Railroad Grant lands and
6 O&C Region Public Domain lands managed by the O&C
7 Trust or the Forest Service in western Oregon. The defini-
8 tion or definitions shall not apply to Tribal lands.

9 (c) SUBMISSION OF RESULTS.—The definition or
10 definitions for old growth in western Oregon established
11 under subsection (b), if approved by at least four members
12 of the Old Growth Review Panel, shall be submitted to
13 the Secretary of Agriculture within six months after the
14 date of the enactment of this Act.

15 **SEC. 325. UNIQUENESS OF OLD GROWTH PROTECTION ON**
16 **OREGON AND CALIFORNIA RAILROAD GRANT**
17 **LANDS.**

18 All sections of this subtitle referring to the term “old
19 growth” are uniquely suited to resolve management issues
20 for the lands covered by this subtitle only, and shall not
21 be construed as precedent for any other situation involving
22 management of other Federal, State, Tribal, or private
23 lands.

CHAPTER 3—TRANSITION**SEC. 331. TRANSITION PERIOD AND OPERATIONS.****(a) TRANSITION PERIOD.—**

(1) COMMENCEMENT; DURATION.—Effective on October 1 of the first fiscal year beginning after the appointment of the Board of Trustees under section 313, a transition period of three fiscal years shall commence.

(2) EXCEPTIONS.—Unless specifically stated in the following subsections, any action under this section shall be deemed not to involve Federal agency action or Federal discretionary involvement or control.

(b) YEAR ONE.—

(1) APPLICABILITY.—During the first fiscal year of the transition period, the activities described in this subsection shall occur.

(2) BOARD OF TRUSTEES ACTIVITIES.—The Board of Trustees shall employ sufficient staff or contractors to prepare for beginning management of O&C Trust lands and O&C Region Public Domain lands in the second fiscal year of the transition period, including preparation of management plans and a harvest schedule for the lands over which

1 management authority is transferred to the O&C
2 Trust in the second fiscal year.

3 (3) FOREST SERVICE ACTIVITIES.—The Forest
4 Service shall begin preparing to assume management
5 authority of all Oregon and California Railroad
6 Grant lands and O&C Region Public Domain lands
7 transferred under section 321 in the second fiscal
8 year.

9 (4) SECRETARY CONCERNED ACTIVITIES.—The
10 Secretary concerned shall continue to exercise man-
11 agement authority over all Oregon and California
12 Railroad Grant lands and O&C Region Public Do-
13 main lands under all existing Federal laws.

14 (5) INFORMATION SHARING.—Upon written re-
15 quest from the Board of Trustees, the Secretary of
16 the Interior shall provide copies of any documents or
17 data, however stored or maintained, that includes
18 the requested information concerning O&C Trust
19 lands. The copies shall be provided as soon as prac-
20 ticable and to the greatest extent possible, but in no
21 event later than 30 days following the date of the re-
22 quest.

23 (6) EXCEPTION.—This subsection does not
24 apply to Tribal lands transferred under subtitle D.

25 (c) YEAR TWO.—

1 (1) APPLICABILITY.—During the second fiscal
2 year of the transition period, the activities described
3 in this subsection shall occur.

4 (2) TRANSFER OF O&C TRUST LANDS.—Effec-
5 tive on October 1 of the second fiscal year of the
6 transition period, management authority over the
7 O&C Trust lands shall be transferred to the O&C
8 Trust.

9 (3) TRANSFER OF LANDS TO FOREST SERV-
10 ICE.—The transfers required by section 321 shall
11 occur.

12 (4) INFORMATION SHARING.—The Secretary of
13 Agriculture shall obtain and manage, as soon as
14 practicable, all documents and data relating to the
15 Oregon and California Railroad Grant lands, O&C
16 Region Public Domain lands, and Coos Bay Wagon
17 Road lands previously managed by the Bureau of
18 Land Management. Upon written request from the
19 Board of Trustees, the Secretary of Agriculture shall
20 provide copies of any documents or data, however
21 stored or maintained, that includes the requested in-
22 formation concerning O&C Trust lands. The copies
23 shall be provided as soon as practicable and to the
24 greatest extent possible, but in no event later than
25 30 days following the date of the request.

1 (5) IMPLEMENTATION OF MANAGEMENT
2 PLAN.—The Board of Trustees shall begin imple-
3 menting its management plan for the O&C Trust
4 lands and revise the plan as necessary. Distribution
5 of revenues generated from all activities on the O&C
6 Trust lands shall be subject to section 315.

7 (d) YEAR THREE AND SUBSEQUENT YEARS.—

8 (1) APPLICABILITY.—During the third fiscal
9 year of the transition period and all subsequent fis-
10 cal years, the activities described in this subsection
11 shall occur.

12 (2) BOARD OF TRUSTEES MANAGEMENT.—The
13 Board of Trustees shall manage the O&C Trust
14 lands pursuant to subtitle A.

15 **SEC. 332. O&C TRUST MANAGEMENT CAPITALIZATION.**

16 (a) BORROWING AUTHORITY.—The Board of Trust-
17 ees is authorized to borrow from any available private
18 sources and non-Federal, public sources in order to pro-
19 vide for the costs of organization, administration, and
20 management of the O&C Trust during the three-year tran-
21 sition period provided in section 331.

22 (b) SUPPORT.—Notwithstanding any other provision
23 of law, O&C Trust counties are authorized to loan to the
24 O&C Trust, and the Board of Trustees is authorized to
25 borrow from willing O&C Trust counties, amounts held on

1 account by such counties that are required to be expended
2 in accordance with the Act of May 23, 1908 (35 Stat. 260;
3 16 U.S.C. 500) and section 13 of the Act of March 1,
4 1911 (36 Stat. 963; 16 U.S.C. 500), except that, upon
5 repayment by the O&C Trust, the obligation of such coun-
6 ties to expend the funds in accordance with such Acts shall
7 continue to apply.

8 **SEC. 333. EXISTING BUREAU OF LAND MANAGEMENT AND**
9 **FOREST SERVICE CONTRACTS.**

10 (a) TREATMENT OF EXISTING CONTRACTS.—Any
11 work or timber contracts sold or awarded by the Bureau
12 of Land Management or Forest Service on or with respect
13 to Oregon and California Railroad Grant lands or O&C
14 Region Public Domain lands before the transfer of the
15 lands to the O&C Trust or the Forest Service, or Tribal
16 lands transferred under subtitle D, shall remain binding
17 and effective according to the terms of the contracts after
18 the transfer of the lands. The Board of Trustees and Sec-
19 retary concerned shall make such accommodations as are
20 necessary to avoid interfering in any way with the per-
21 formance of the contracts.

22 (b) TREATMENT OF PAYMENTS UNDER CON-
23 TRACTS.—Payments made pursuant to the contracts de-
24 scribed in subsection (a), if any, shall be made as provided
25 in those contracts and not made to the O&C Trust.

1 **SEC. 334. PROTECTION OF VALID EXISTING RIGHTS AND**
2 **ACCESS TO NON-FEDERAL LAND.**

3 (a) **VALID RIGHTS.**—Nothing in this title, or any
4 amendment made by this title, shall be construed as termi-
5 nating any valid lease, permit, patent, right-of-way, agree-
6 ment, or other right of authorization existing on the date
7 of the enactment of this Act with regard to Oregon and
8 California Railroad Grant lands or O&C Region Public
9 Domain lands, including O&C Trust lands over which
10 management authority is transferred to the O&C Trust
11 pursuant to section 311(c)(1), lands transferred to the
12 Forest Service under section 321, and Tribal lands trans-
13 ferred under subtitle D.

14 (b) **ACCESS TO LANDS.**—

15 (1) **EXISTING ACCESS RIGHTS.**—The Secretary
16 concerned shall preserve all rights of access and use,
17 including (but not limited to) reciprocal right-of-way
18 agreements, tail hold agreements, or other right-of-
19 way or easement obligations existing on the date of
20 the enactment of this Act, and such rights shall re-
21 main applicable to lands covered by this subtitle in
22 the same manner and to the same extent as such
23 rights applied before the date of the enactment of
24 this Act.

25 (2) **NEW ACCESS RIGHTS.**—If a current or fu-
26 ture landowner of land intermingled with Oregon

1 and California Railroad Grant lands or O&C Region
2 Public Domain lands does not have an existing ac-
3 cess agreement related to the lands covered by this
4 subtitle, the Secretary concerned shall enter into an
5 access agreement, including appurtenant lands, to
6 secure the landowner the reasonable use and enjoy-
7 ment of the landowner's land, including the harvest
8 and hauling of timber.

9 (c) MANAGEMENT COOPERATION.—The Board of
10 Trustees and the Secretary concerned shall provide cur-
11 rent and future landowners of land intermingled with Or-
12 egon and California Railroad Grant lands or O&C Region
13 Public Domain lands the permission needed to manage
14 their lands, including to locate tail holds, tramways, and
15 logging wedges, to purchase guylines, and to cost-share
16 property lines surveys to the lands covered by this subtitle,
17 within 30 days after receiving notification of the land-
18 owner's plan of operation.

19 (d) JUDICIAL REVIEW.—Notwithstanding section
20 312(g)(2), a private landowner may obtain judicial review
21 of a decision of the Board of Trustees to deny—

22 (1) the landowner the rights provided by sub-
23 section (b) regarding access to the landowner's land;
24 or

1 (2) the landowner the reasonable use and enjoy-
2 ment of the landowner's land.

3 **SEC. 335. REPEAL OF SUPERSEDED LAW RELATING TO OR-**
4 **EGON AND CALIFORNIA RAILROAD GRANT**
5 **LANDS.**

6 (a) REPEAL.—Except as provided in subsection (b),
7 the Act of August 28, 1937 (43 U.S.C. 1181a et seq.)
8 is repealed effective on October 1 of the first fiscal year
9 beginning after the appointment of the Board of Trustees.

10 (b) EFFECT OF CERTAIN COURT RULINGS.—If, as
11 a result of judicial review authorized by section 312, any
12 provision of this subtitle is held to be invalid and imple-
13 mentation of the provision or any activity conducted under
14 the provision is then enjoined, the Act of August 28, 1937
15 (43 U.S.C. 1181a et seq.), as in effect immediately before
16 its repeal by subsection (a), shall be restored to full legal
17 force and effect as if the repeal had not taken effect.

18 **Subtitle B—Coos Bay Wagon Roads**

19 **SEC. 341. TRANSFER OF MANAGEMENT AUTHORITY OVER**
20 **CERTAIN COOS BAY WAGON ROAD GRANT**
21 **LANDS TO COOS COUNTY, OREGON.**

22 (a) TRANSFER REQUIRED.—Except in the case of the
23 lands described in subsection (b), the Secretary of the In-
24 terior shall transfer management authority over the Coos
25 Bay Wagon Road Grant lands reconveyed to the United

1 States pursuant to the first section of the Act of February
2 26, 1919 (40 Stat. 1179), and the surface resources there-
3 on, to the Coos County government. The transfer shall be
4 completed not later than one year after the date of the
5 enactment of this Act.

6 (b) LANDS EXCLUDED.—The transfer under sub-
7 section (a) shall not include any of the following Coos Bay
8 Wagon Road Grant lands:

9 (1) Federal lands within the National Land-
10 scape Conservation System as of January 1, 2013.

11 (2) Federal lands designated as Areas of Crit-
12 ical Environmental Concern as of January 1, 2013.

13 (3) Federal lands that were in the National
14 Wilderness Preservation System as of January 1,
15 2013.

16 (4) Federal lands included in the National Wild
17 and Scenic Rivers System of January 1, 2013.

18 (5) Federal lands within the boundaries of a
19 national monument, park, or other developed recre-
20 ation area as of January 1, 2013.

21 (6) All stands of timber generally older than
22 125 years old, as of January 1, 2011, which shall
23 be conclusively determined by reference to the pol-
24 ygon spatial data layer in the electronic data com-
25 pilation filed by the Bureau of Land Management

1 based on the predominant birth-date attribute, and
2 the boundaries of such stands shall be conclusively
3 determined for all purposes by the global positioning
4 system coordinates for such stands.

5 (7) Tribal lands addressed in subtitle D.

6 (c) MANAGEMENT.—

7 (1) IN GENERAL.—Coos County shall manage
8 the Coos Bay Wagon Road Grant lands over which
9 management authority is transferred under sub-
10 section (a) consistent with section 314, and for pur-
11 poses of applying such section, “Board of Trustees”
12 shall be deemed to mean “Coos County” and “O&C
13 Trust lands” shall be deemed to mean the trans-
14 ferred lands.

15 (2) RESPONSIBILITY FOR MANAGEMENT
16 COSTS.—Coos County shall be responsible for all
17 management and administrative costs of the Coos
18 Bay Wagon Road Grant lands over which manage-
19 ment authority is transferred under subsection (a).

20 (3) MANAGEMENT CONTRACTS.—Coos County
21 may contract, if competitively bid, with one or more
22 public, private, or tribal entities, including (but not
23 limited to) the Coquille Indian Tribe, if such entities
24 are substantially based in Coos or Douglas Counties,
25 Oregon, to manage and administer the lands.

1 (d) TREATMENT OF REVENUES.—

2 (1) IN GENERAL.—All revenues generated from
3 the Coos Bay Wagon Road Grant lands over which
4 management authority is transferred under sub-
5 section (a) shall be deposited in the general fund of
6 the Coos County treasury to be used as are other
7 unrestricted county funds.

8 (2) TREASURY.—As soon as practicable after
9 the end of the third fiscal year of the transition pe-
10 riod and in each of the subsequent seven fiscal
11 years, Coos County shall submit a payment of
12 \$400,000 to the United States Treasury.

13 (3) DOUGLAS COUNTY.—Beginning with the
14 first fiscal year for which management of the Coos
15 Bay Wagon Road Grant lands over which manage-
16 ment authority is transferred under subsection (a)
17 generates net positive revenues, and for all subse-
18 quent fiscal years, Coos County shall transmit a
19 payment to the general fund of the Douglas County
20 treasury from the net revenues generated from the
21 lands. The payment shall be made as soon as prac-
22 ticable following the end of each fiscal year and the
23 amount of the payment shall bear the same propor-
24 tion to total net revenues for the fiscal year as the
25 proportion of the Coos Bay Wagon Road Grant

1 lands in Douglas County in relation to all Coos Bay
2 Wagon Road Grant lands in Coos and Douglas
3 Counties as of January 1, 2013.

4 **SEC. 342. TRANSFER OF CERTAIN COOS BAY WAGON ROAD**
5 **GRANT LANDS TO FOREST SERVICE.**

6 The Secretary of the Interior shall transfer adminis-
7 trative jurisdiction over the Coos Bay Wagon Road Grant
8 lands excluded by paragraphs (1) through (6) of section
9 341(b) to the Secretary of Agriculture for inclusion in the
10 National Forest System and administration by the Forest
11 Service as provided in section 322.

12 **SEC. 343. LAND EXCHANGE AUTHORITY.**

13 Coos County may recommend land exchanges to the
14 Secretary of Agriculture and carry out such land ex-
15 changes in the manner provided in section 316.

16 **Subtitle C—Oregon Treasures**

17 **CHAPTER 1—WILDERNESS AREAS**

18 **SEC. 351. DESIGNATION OF DEVIL’S STAIRCASE WILDER-**
19 **NESS.**

20 (a) DESIGNATION.—In furtherance of the purposes of
21 the Wilderness Act (16 U.S.C. 1131 et seq.), the Federal
22 land in the State of Oregon administered by the Forest
23 Service and the Bureau of Land Management, comprising
24 approximately 30,520 acres, as generally depicted on the
25 map titled “Devil’s Staircase Wilderness Proposal”, dated

1 October 26, 2009, are designated as a wilderness area for
2 inclusion in the National Wilderness Preservation System
3 and to be known as the “Devil’s Staircase Wilderness”.

4 (b) MAP AND LEGAL DESCRIPTION.—As soon as
5 practicable after the date of the enactment of this Act,
6 the Secretary shall file with the Committee on Natural Re-
7 sources of the House of Representatives and the Com-
8 mittee on Energy and Natural Resources of the Senate
9 a map and legal description of wilderness area designated
10 by subsection (a). The map and legal description shall
11 have the same force and effect as if included in this sub-
12 division, except that the Secretary may correct clerical and
13 typographical errors in the map and description. In the
14 case of any discrepancy between the acreage specified in
15 subsection (a) and the map, the map shall control. The
16 map and legal description shall be on file and available
17 for public inspection in the Office of the Chief of the For-
18 est Service.

19 (c) ADMINISTRATION.—

20 (1) IN GENERAL.—Subject to valid existing
21 rights, the Devil’s Staircase Wilderness Area shall be
22 administered by the Secretaries of Agriculture and
23 the Interior, in accordance with the Wilderness Act
24 and the Oregon Wilderness Act of 1984, except that,
25 with respect to the wilderness area, any reference in

1 the Wilderness Act to the effective date of that Act
2 shall be deemed to be a reference to the date of the
3 enactment of this Act.

4 (2) FOREST SERVICE ROADS.—As provided in
5 section 4(d)(1) of the Wilderness Act (16 U.S.C.
6 1133(d)(1)), the Secretary of Agriculture shall—

7 (A) decommission any National Forest
8 System road within the wilderness boundaries;
9 and

10 (B) convert Forest Service Road 4100
11 within the wilderness boundary to a trail for
12 primitive recreational use.

13 (d) INCORPORATION OF ACQUIRED LAND AND IN-
14 TERESTS.—Any land within the boundary of the wilder-
15 ness area designated by this section that is acquired by
16 the United States shall—

17 (1) become part of the Devil’s Staircase Wilder-
18 ness Area; and

19 (2) be managed in accordance with this section
20 and any other applicable law.

21 (e) FISH AND WILDLIFE.—Nothing in this section
22 shall be construed as affecting the jurisdiction or respon-
23 sibilities of the State of Oregon with respect to wildlife
24 and fish in the national forests.

1 (f) WITHDRAWAL.—Subject to valid rights in exist-
2 ence on the date of enactment of this Act, the Federal
3 land designated as wilderness area by this section is with-
4 drawn from all forms of—

5 (1) entry, appropriation, or disposal under the
6 public land laws;

7 (2) location, entry, and patent under the mining
8 laws; and

9 (3) disposition under all laws pertaining to min-
10 eral and geothermal leasing or mineral materials.

11 (g) PROTECTION OF TRIBAL RIGHTS.—Nothing in
12 this section shall be construed to diminish—

13 (1) the existing rights of any Indian tribe; or

14 (2) tribal rights regarding access to Federal
15 lands for tribal activities, including spiritual, cul-
16 tural, and traditional food gathering activities.

17 **SEC. 352. EXPANSION OF WILD ROGUE WILDERNESS AREA.**

18 (a) EXPANSION.—In accordance with the Wilderness
19 Act (16 U.S.C. 1131 et seq.), certain Federal land man-
20 aged by the Bureau of Land Management, comprising ap-
21 proximately 58,100 acres, as generally depicted on the
22 map entitled “Wild Rogue”, dated September 16, 2010,
23 are hereby included in the Wild Rogue Wilderness, a com-
24 ponent of the National Wilderness Preservation System.

25 (b) MAPS AND LEGAL DESCRIPTIONS.—

1 (1) IN GENERAL.—As soon as practicable after
2 the date of enactment of this Act, the Secretary of
3 the Interior shall file a map and a legal description
4 of the wilderness area designated by this section,
5 with—

6 (A) the Committee on Energy and Natural
7 Resources of the Senate; and

8 (B) the Committee on Natural Resources
9 of the House of Representatives.

10 (2) FORCE OF LAW.—The maps and legal de-
11 scriptions filed under paragraph (1) shall have the
12 same force and effect as if included in this subtitle,
13 except that the Secretary may correct typographical
14 errors in the maps and legal descriptions.

15 (3) PUBLIC AVAILABILITY.—Each map and
16 legal description filed under paragraph (1) shall be
17 on file and available for public inspection in the ap-
18 propriate offices of the Forest Service.

19 (c) ADMINISTRATION.—Subject to valid existing
20 rights, the area designated as wilderness by this section
21 shall be administered by the Secretary of Agriculture in
22 accordance with the Wilderness Act (16 U.S.C. 1131 et
23 seq.).

24 (d) WITHDRAWAL.—Subject to valid rights in exist-
25 ence on the date of enactment of this Act, the Federal

1 land designated as wilderness by this section is withdrawn
2 from all forms of—

3 (1) entry, appropriation, or disposal under the
4 public land laws;

5 (2) location, entry, and patent under the mining
6 laws; and

7 (3) disposition under all laws pertaining to min-
8 eral and geothermal leasing or mineral materials.

9 **CHAPTER 2—WILD AND SCENIC RIVER**
10 **DESIGNATED AND RELATED PROTEC-**
11 **TIONS**

12 **SEC. 361. WILD AND SCENIC RIVER DESIGNATIONS,**
13 **MOLALLA RIVER.**

14 (a) DESIGNATIONS.—Section 3(a) of the Wild and
15 Scenic Rivers Act (16 U.S.C. 1274(a)) is amended by add-
16 ing at the end the following:

17 “(____) MOLALLA RIVER, OREGON.—The fol-
18 lowing segments in the State of Oregon, to be ad-
19 ministered by the Secretary of the Interior as a rec-
20 reational river:

21 “(A) The approximately 15.1-mile segment
22 from the southern boundary line of T. 7 S., R.
23 4 E., sec. 19, downstream to the edge of the
24 Bureau of Land Management boundary in T. 6
25 S., R. 3 E., sec. 7.

1 “(B) The approximately 6.2-mile segment
2 from the easternmost Bureau of Land Manage-
3 ment boundary line in the NE¹/₄ sec. 4, T. 7 S.,
4 R. 4 E., downstream to the confluence with the
5 Molalla River.”.

6 (b) TECHNICAL CORRECTIONS.—Section 3(a)(102) of
7 the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(102))
8 is amended—

9 (1) in the heading, by striking “SQUAW
10 CREEK” and inserting “WHYCHUS CREEK”;

11 (2) in the matter preceding subparagraph (A),
12 by striking “McAllister Ditch, including the Soap
13 Fork Squaw Creek, the North Fork, the South
14 Fork, the East and West Forks of Park Creek, and
15 Park Creek Fork” and inserting “Plainview Ditch,
16 including the Soap Creek, the North and South
17 Forks of Whychus Creek, the East and West Forks
18 of Park Creek, and Park Creek”; and

19 (3) in subparagraph (B), by striking
20 “McAllister Ditch” and inserting “Plainview Ditch”.

21 **SEC. 362. WILD AND SCENIC RIVERS ACT TECHNICAL COR-**
22 **RECTIONS RELATED TO CHETCO RIVER.**

23 Section 3(a)(69) of the Wild and Scenic Rivers Act
24 (16 U.S.C. 1274(a)(69)) is amended—

1 (1) by inserting before the “The 44.5-mile” the
2 following:

3 “(A) DESIGNATIONS.—”;

4 (2) by redesignating subparagraphs (A), (B),
5 and (C) as clauses (i), (ii), and (iii), respectively
6 (and by moving the margins 2 ems to the right);

7 (3) in clause (i), as redesignated—

8 (A) by striking “25.5-mile” and inserting
9 “27.5-mile”; and

10 (B) by striking “Boulder Creek at the
11 Kalmiopsis Wilderness boundary” and inserting
12 “Mislatah Creek”;

13 (4) in clause (ii), as redesignated—

14 (A) by striking “8” and inserting “7.5”;

15 (B) by striking “Boulder Creek” and in-
16 serting “Mislatah Creek”; and

17 (C) by striking “Steel Bridge” and insert-
18 ing “Eagle Creek”;

19 (5) in clause (iii), as redesignated—

20 (A) by striking “11” and inserting “9.5”;

21 and

22 (B) by striking “Steel Bridge” and insert-
23 ing “Eagle Creek”; and

24 (6) by adding at the end the following:

1 “(B) WITHDRAWAL.—Subject to valid rights,
2 the Federal land within the boundaries of the river
3 segments designated by subparagraph (A), is with-
4 drawn from all forms of—

5 “(i) entry, appropriation, or disposal under
6 the public land laws;

7 “(ii) location, entry, and patent under the
8 mining laws; and

9 “(iii) disposition under all laws pertaining
10 to mineral and geothermal leasing or mineral
11 materials.”.

12 **SEC. 363. WILD AND SCENIC RIVER DESIGNATIONS,**
13 **WASSON CREEK AND FRANKLIN CREEK.**

14 Section 3(a) of the Wild and Scenic Rivers Act (16
15 U.S.C. 1274(a)) is amended by adding at the end the fol-
16 lowing:

17 “(____) FRANKLIN CREEK, OREGON.—The 4.5-
18 mile segment from the headwaters to the private
19 land boundary in section 8 to be administered by the
20 Secretary of Agriculture as a wild river.

21 “(____) WASSON CREEK, OREGON.—

22 “(A) The 4.2-mile segment from the east-
23 ern edge of section 17 downstream to the
24 boundary of sections 11 and 12 to be adminis-

1 tered by the Secretary of Interior as a wild
2 river.

3 “(B) The 5.9-mile segment downstream
4 from the boundary of sections 11 and 12 to the
5 private land boundary in section 22 to be ad-
6 ministered by the Secretary of Agriculture as a
7 wild river.”.

8 **SEC. 364. WILD AND SCENIC RIVER DESIGNATIONS, ROGUE**
9 **RIVER AREA.**

10 (a) DESIGNATIONS.—Section 3(a)(5) of the Wild and
11 Scenic Rivers Act (16 U.S.C. 1274(a)(5)) (relating to the
12 Rogue River, Oregon) is amended by adding at the end
13 the following: “In addition to the segment described in the
14 previous sentence, the following segments in the Rogue
15 River area are designated:

16 “(A) KELSEY CREEK.—The approximately 4.8
17 miles of Kelsey Creek from east section line of
18 T32S, R9W, sec. 34, W.M. to the confluence with
19 the Rogue River as a wild river.

20 “(B) EAST FORK KELSEY CREEK.—The ap-
21 proximately 4.6 miles of East Fork Kelsey Creek
22 from the Wild Rogue Wilderness boundary in T33S,
23 R8W, sec. 5, W.M. to the confluence with Kelsey
24 Creek as a wild river.

25 “(C) WHISKY CREEK.—

1 “(i) The approximately 0.6 miles of Whis-
2 ky Creek from the confluence of the East Fork
3 and West Fork to 0.1 miles downstream from
4 road 33–8–23 as a recreational river.

5 “(ii) The approximately 1.9 miles of Whis-
6 ky Creek from 0.1 miles downstream from road
7 33–8–23 to the confluence with the Rogue
8 River as a wild river.

9 “(D) EAST FORK WHISKY CREEK.—

10 “(i) The approximately 2.8 miles of East
11 Fork Whisky Creek from the Wild Rogue Wil-
12 derness boundary in T33S, R8W, sec. 11, W.M.
13 to 0.1 miles downstream of road 33–8–26
14 crossing as a wild river.

15 “(ii) The approximately .3 miles of East
16 Fork Whisky Creek from 0.1 miles downstream
17 of road 33–8–26 to the confluence with Whisky
18 Creek as a recreational river.

19 “(E) WEST FORK WHISKY CREEK.—The ap-
20 proximately 4.8 miles of West Fork Whisky Creek
21 from its headwaters to the confluence with Whisky
22 Creek as a wild river.

23 “(F) BIG WINDY CREEK.—

24 “(i) The approximately 1.5 miles of Big
25 Windy Creek from its headwaters to 0.1 miles

1 downstream from road 34-9-17.1 as a scenic
2 river.

3 “(ii) The approximately 5.8 miles of Big
4 Windy Creek from 0.1 miles downstream from
5 road 34-9-17.1 to the confluence with the
6 Rogue River as a wild river.

7 “(G) EAST FORK BIG WINDY CREEK.—

8 “(i) The approximately 0.2 miles of East
9 Fork Big Windy Creek from its headwaters to
10 0.1 miles downstream from road 34-8-36 as a
11 scenic river.

12 “(ii) The approximately 3.7 miles of East
13 Fork Big Windy Creek from 0.1 miles down-
14 stream from road 34-8-36 to the confluence
15 with Big Windy Creek as a wild river.

16 “(H) LITTLE WINDY CREEK.—The approxi-
17 mately 1.9 miles of Little Windy Creek from 0.1
18 miles downstream of road 34-8-36 to the confluence
19 with the Rogue River as a wild river.

20 “(I) HOWARD CREEK.—

21 “(i) The approximately 0.3 miles of How-
22 ard Creek from its headwaters to 0.1 miles
23 downstream of road 34-9-34 as a scenic river.

24 “(ii) The approximately 6.9 miles of How-
25 ard Creek from 0.1 miles downstream of road

1 34–9–34 to the confluence with the Rogue
2 River as a wild river.

3 “(J) MULE CREEK.—The approximately 6.3
4 miles of Mule Creek from east section line of T32S,
5 R10W, sec. 25, W.M. to the confluence with the
6 Rogue River as a wild river.

7 “(K) ANNA CREEK.—The approximately 3.5-
8 mile section of Anna Creek from its headwaters to
9 the confluence with Howard Creek as a wild river.

10 “(L) MISSOURI CREEK.—The approximately 1.6
11 miles of Missouri Creek from the Wild Rogue Wil-
12 derness boundary in T33S, R10W, sec. 24, W.M. to
13 the confluence with the Rogue River as a wild river.

14 “(M) JENNY CREEK.—The approximately 1.8
15 miles of Jenny Creek from the Wild Rogue Wilder-
16 ness boundary in T33S, R9W, sec. 28, W.M. to the
17 confluence with the Rogue River as a wild river.

18 “(N) RUM CREEK.—The approximately 2.2
19 miles of Rum Creek from the Wild Rogue Wilder-
20 ness boundary in T34S, R8W, sec. 9, W.M. to the
21 confluence with the Rogue River as a wild river.

22 “(O) EAST FORK RUM CREEK.—The approxi-
23 mately 1.5 miles of East Rum Creek from the Wild
24 Rogue Wilderness boundary in T34S, R8W, sec. 10,

1 W.M. to the confluence with Rum Creek as a wild
2 river.

3 “(P) WILDCAT CREEK.—The approximately
4 1.7-mile section of Wildcat Creek from its head-
5 waters downstream to the confluence with the Rogue
6 River as a wild river.

7 “(Q) MONTGOMERY CREEK.—The approxi-
8 mately 1.8-mile section of Montgomery Creek from
9 its headwaters downstream to the confluence with
10 the Rogue River as a wild river.

11 “(R) HEWITT CREEK.—The approximately 1.2
12 miles of Hewitt Creek from the Wild Rogue Wilder-
13 ness boundary in T33S, R9W, sec. 19, W.M. to the
14 confluence with the Rogue River as a wild river.

15 “(S) BUNKER CREEK.—The approximately 6.6
16 miles of Bunker Creek from its headwaters to the
17 confluence with the Rogue River as a wild river.

18 “(T) DULOG CREEK.—

19 “(i) The approximately 0.8 miles of Dulog
20 Creek from its headwaters to 0.1 miles down-
21 stream of road 34–8–36 as a scenic river.

22 “(ii) The approximately 1.0 miles of Dulog
23 Creek from 0.1 miles downstream of road 34–
24 8–36 to the confluence with the Rogue River as
25 a wild river.

1 “(U) QUAIL CREEK.—The approximately 1.7
2 miles of Quail Creek from the Wild Rogue Wilder-
3 ness boundary in T33S, R10W, sec. 1, W.M. to the
4 confluence with the Rogue River as a wild river.

5 “(V) MEADOW CREEK.—The approximately 4.1
6 miles of Meadow Creek from its headwaters to the
7 confluence with the Rogue River as a wild river.

8 “(W) RUSSIAN CREEK.—The approximately 2.5
9 miles of Russian Creek from the Wild Rogue Wilder-
10 ness boundary in T33S, R8W, sec. 20, W.M. to the
11 confluence with the Rogue River as a wild river.

12 “(X) ALDER CREEK.—The approximately 1.2
13 miles of Alder Creek from its headwaters to the con-
14 fluence with the Rogue River as a wild river.

15 “(Y) BOOZE CREEK.—The approximately 1.5
16 miles of Booze Creek from its headwaters to the
17 confluence with the Rogue River as a wild river.

18 “(Z) BRONCO CREEK.—The approximately 1.8
19 miles of Bronco Creek from its headwaters to the
20 confluence with the Rogue River as a wild river.

21 “(AA) COPSEY CREEK.—The approximately 1.5
22 miles of Copsey Creek from its headwaters to the
23 confluence with the Rogue River as a wild river.

1 “(BB) CORRAL CREEK.—The approximately
2 0.5 miles of Corral Creek from its headwaters to the
3 confluence with the Rogue River as a wild river.

4 “(CC) COWLEY CREEK.—The approximately
5 0.9 miles of Cowley Creek from its headwaters to
6 the confluence with the Rogue River as a wild river.

7 “(DD) DITCH CREEK.—The approximately 1.8
8 miles of Ditch Creek from the Wild Rogue Wilder-
9 ness boundary in T33S, R9W, sec. 5, W.M. to its
10 confluence with the Rogue River as a wild river.

11 “(EE) FRANCIS CREEK.—The approximately
12 0.9 miles of Francis Creek from its headwaters to
13 the confluence with the Rogue River as a wild river.

14 “(FF) LONG GULCH.—The approximately 1.1
15 miles of Long Gulch from the Wild Rogue Wilder-
16 ness boundary in T33S, R10W, sec. 23, W.M. to the
17 confluence with the Rogue River as a wild river.

18 “(GG) BAILEY CREEK.—The approximately 1.7
19 miles of Bailey Creek from the west section line of
20 T34S, R8W, sec. 14, W.M. to the confluence of the
21 Rogue River as a wild river.

22 “(HH) SHADY CREEK.—The approximately 0.7
23 miles of Shady Creek from its headwaters to the
24 confluence with the Rogue River as a wild river.

25 “(II) SLIDE CREEK.—

1 “(i) The approximately 0.5-mile section of
2 Slide Creek from its headwaters to 0.1 miles
3 downstream from road 33–9–6 as a scenic
4 river.

5 “(ii) The approximately 0.7-mile section of
6 Slide Creek from 0.1 miles downstream of road
7 33–9–6 to the confluence with the Rogue River
8 as a wild river.”.

9 (b) MANAGEMENT.—All wild, scenic, and recreation
10 classified segments designated by the amendment made by
11 subsection (a) shall be managed as part of the Rogue Wild
12 and Scenic River.

13 (c) WITHDRAWAL.—Subject to valid rights, the Fed-
14 eral land within the boundaries of the river segments des-
15 ignated by the amendment made by subsection (a) is with-
16 drawn from all forms of—

17 (1) entry, appropriation, or disposal under the
18 public land laws;

19 (2) location, entry, and patent under the mining
20 laws; and

21 (3) disposition under all laws pertaining to min-
22 eral and geothermal leasing or mineral materials.

1 **SEC. 365. ADDITIONAL PROTECTIONS FOR ROGUE RIVER**
2 **TRIBUTARIES.**

3 (a) **WITHDRAWAL.**—Subject to valid rights, the Fed-
4 eral land within a quarter-mile on each side of the streams
5 listed in subsection (b) is withdrawn from all forms of—

6 (1) entry, appropriation, or disposal under the
7 public land laws;

8 (2) location, entry, and patent under the mining
9 laws; and

10 (3) disposition under all laws pertaining to min-
11 eral and geothermal leasing or mineral materials.

12 (b) **STREAM SEGMENTS.**—Subsection (a) applies the
13 following tributaries of the Rogue River:

14 (1) **KELSEY CREEK.**—The approximately 4.5
15 miles of Kelsey Creek from its headwaters to the
16 east section line of 32S 9W sec. 34.

17 (2) **EAST FORK KELSEY CREEK.**—The approxi-
18 mately .2 miles of East Fork Kelsey Creek from its
19 headwaters to the Wild Rogue Wilderness boundary
20 in 33S 8W sec. 5.

21 (3) **EAST FORK WHISKY CREEK.**—The approxi-
22 mately .7 miles of East Fork Whisky Creek from its
23 headwaters to the Wild Rogue Wilderness boundary
24 in 33S 8W section 11.

1 (4) LITTLE WINDY CREEK.—The approximately
2 1.2 miles of Little Windy Creek from its headwaters
3 to west section line of 33S 9W sec. 34.

4 (5) MULE CREEK.—The approximately 5.1
5 miles of Mule Creek from its headwaters to east sec-
6 tion line of 32S 10W sec. 25.

7 (6) MISSOURI CREEK.—The approximately 3.1
8 miles of Missouri Creek from its headwaters to the
9 Wild Rogue Wilderness boundary in 33S 10W sec.
10 24.

11 (7) JENNY CREEK.—The approximately 3.1
12 miles of Jenny Creek from its headwaters to the
13 Wild Rogue Wilderness boundary in 33S 9W sec.
14 28.

15 (8) RUM CREEK.—The approximately 2.2 miles
16 of Rum Creek from its headwaters to the Wild
17 Rogue Wilderness boundary in 34S 8W sec. 9.

18 (9) EAST FORK RUM CREEK.—The approxi-
19 mately .5 miles of East Fork Rum Creek from its
20 headwaters to the Wild Rogue Wilderness boundary
21 in 34S 8W sec. 10.

22 (10) HEWITT CREEK.—The approximately 1.4
23 miles of Hewitt Creek from its headwaters to the
24 Wild Rogue Wilderness boundary in 33S 9W sec.
25 19.

1 (11) QUAIL CREEK.—The approximately .8
2 miles of Quail Creek from its headwaters to the Wild
3 Rogue Wilderness boundary in 33S 10W sec. 1.

4 (12) RUSSIAN CREEK.—The approximately .1
5 miles of Russian Creek from its headwaters to the
6 Wild Rogue Wilderness boundary in 33S 8W sec.
7 20.

8 (13) DITCH CREEK.—The approximately .7
9 miles of Ditch Creek from its headwaters to the
10 Wild Rogue Wilderness boundary in 33S 9W sec. 5.

11 (14) LONG GULCH.—The approximately 1.4
12 miles of Long Gulch from its headwaters to the Wild
13 Rogue Wilderness boundary in 33S 10W sec. 23.

14 (15) BAILEY CREEK.—The approximately 1.4
15 miles of Bailey Creek from its headwaters to west
16 section line of 34S 8W sec. 14.

17 (16) QUARTZ CREEK.—The approximately 3.3
18 miles of Quartz Creek from its headwaters to its
19 confluence with the North Fork Galice Creek.

20 (17) NORTH FORK GALICE CREEK.—The ap-
21 proximately 5.7 miles of the North Fork Galice
22 Creek from its headwaters to its confluence with
23 Galice Creek.

24 (18) GRAVE CREEK.—The approximately 10.2
25 mile section of Grave Creek from the confluence of

1 Wolf Creek downstream to the confluence with the
2 Rogue River.

3 (19) CENTENNIAL GULCH.—The approximately
4 2.2 miles of Centennial Gulch from its headwaters to
5 its confluence with the Rogue River.

6 **CHAPTER 3—ADDITIONAL PROTECTIONS**

7 **SEC. 371. LIMITATIONS ON LAND ACQUISITION.**

8 (a) PROHIBITION ON USE OF CONDEMNATION.—The
9 Secretary of the Interior or the Secretary of Agriculture
10 may not acquire by condemnation any land or interest
11 within the boundaries of the river segments or wilderness
12 designated by this subtitle.

13 (b) LANDOWNER CONSENT REQUIRED.—Private or
14 non-Federal public property shall not be included within
15 the boundaries of the river segments or wilderness des-
16 ignated by this subtitle unless the owner of the property
17 has consented in writing to having that property included
18 in such boundaries.

19 **SEC. 372. OVERFLIGHTS.**

20 (a) IN GENERAL.—Nothing in this subtitle or the
21 Wilderness Act shall preclude low-level overflights and op-
22 erations of military aircraft, helicopters, missiles, or un-
23 manned aerial vehicles over the wilderness designated by
24 this subtitle, including military overflights and operations
25 that can be seen or heard within the wilderness.

1 (b) SPECIAL USE AIRSPACE AND TRAINING
2 ROUTES.—Nothing in this subtitle or the Wilderness Act
3 shall preclude the designation of new units of special use
4 airspace, the expansion of existing units of special use air-
5 space, or the use or establishment of military training
6 routes over wilderness designated by this subtitle.

7 **SEC. 373. BUFFER ZONES.**

8 Nothing in this subtitle—

9 (1) establishes or authorizes the establishment
10 of a protective perimeter or buffer zone around the
11 boundaries of the river segments or wilderness des-
12 ignated by this subtitle; or

13 (2) precludes, limits, or restricts an activity
14 from being conducted outside such boundaries, in-
15 cluding an activity that can be seen or heard from
16 within such boundaries.

17 **SEC. 374. PREVENTION OF WILDFIRES.**

18 The designation of a river segment or wilderness by
19 this subtitle or the withdrawal of the Federal land under
20 this subtitle shall not be construed to interfere with the
21 authority of the Secretary of the Interior or the Secretary
22 of Agriculture to authorize mechanical thinning of trees
23 or underbrush to prevent or control the spread of wildfires,
24 or conditions creating the risk of wildfire that threatens
25 areas outside the boundary of the wilderness, or the use

1 of mechanized equipment for wildfire pre-suppression and
2 suppression.

3 **SEC. 375. LIMITATION ON DESIGNATION OF CERTAIN**
4 **LANDS IN OREGON.**

5 A national monument designation under the Act of
6 June 8, 1906 (commonly known as the Antiquities Act;
7 16 U.S.C. 431 et seq.) within or on any portion of the
8 Oregon and California Railroad Grant Lands or the O&C
9 Region Public Domain lands, regardless of whether man-
10 agement authority over the lands are transferred to the
11 O&C Trust pursuant to section 311(c)(1), the lands are
12 excluded from the O&C Trust pursuant to section
13 311(c)(2), or the lands are transferred to the Forest Serv-
14 ice under section 321, shall only be made pursuant to Con-
15 gressional approval in an Act of Congress.

16 **CHAPTER 4—EFFECTIVE DATE**

17 **SEC. 381. EFFECTIVE DATE.**

18 (a) IN GENERAL.—This subtitle and the amendments
19 made by this subtitle shall take effect on October 1 of the
20 second fiscal year of the transition period.

21 (b) EXCEPTION.—If, as a result of judicial review au-
22 thorized by section 312, any provision of subtitle A is held
23 to be invalid and implementation of the provision or any
24 activity conducted under the provision is enjoined, this
25 subtitle and the amendments made by this subtitle shall

1 not take effect, or if the effective date specified in sub-
2 section (a) has already occurred, this subtitle shall have
3 no force and effect and the amendments made by this sub-
4 title are repealed.

5 **Subtitle D—Tribal Trust Lands**

6 **PART 1—COUNCIL CREEK LAND CONVEYANCE**

7 **SEC. 391. DEFINITIONS.**

8 In this part:

9 (1) COUNCIL CREEK LAND.—The term “Council
10 Creek land” means the approximately 17,519 acres
11 of land, as generally depicted on the map entitled
12 “Canyon Mountain Land Conveyance” and dated
13 June 27, 2013.

14 (2) TRIBE.—The term “Tribe” means the Cow
15 Creek Band of Umpqua Tribe of Indians.

16 **SEC. 392. CONVEYANCE.**

17 (a) IN GENERAL.—Subject to valid existing rights,
18 including rights-of-way, all right, title, and interest of the
19 United States in and to the Council Creek land, including
20 any improvements located on the land, appurtenances to
21 the land, and minerals on or in the land, including oil and
22 gas, shall be—

23 (1) held in trust by the United States for the
24 benefit of the Tribe; and

25 (2) part of the reservation of the Tribe.

1 (b) SURVEY.—Not later than one year after the date
2 of enactment of this Act, the Secretary of the Interior
3 shall complete a survey of the boundary lines to establish
4 the boundaries of the land taken into trust under sub-
5 section (a).

6 **SEC. 393. MAP AND LEGAL DESCRIPTION.**

7 (a) IN GENERAL.—As soon as practicable after the
8 date of enactment of this Act, the Secretary of the Interior
9 shall file a map and legal description of the Council Creek
10 land with—

11 (1) the Committee on Energy and Natural Re-
12 sources of the Senate; and

13 (2) the Committee on Natural Resources of the
14 House of Representatives.

15 (b) FORCE AND EFFECT.—The map and legal de-
16 scription filed under subsection (a) shall have the same
17 force and effect as if included in this subdivision, except
18 that the Secretary of the Interior may correct any clerical
19 or typographical errors in the map or legal description.

20 (c) PUBLIC AVAILABILITY.—The map and legal de-
21 scription filed under subsection (a) shall be on file and
22 available for public inspection in the Office of the Sec-
23 retary of the Interior.

1 **SEC. 394. ADMINISTRATION.**

2 (a) IN GENERAL.—Unless expressly provided in this
3 part, nothing in this part affects any right or claim of
4 the Tribe existing on the date of enactment of this Act
5 to any land or interest in land.

6 (b) PROHIBITIONS.—

7 (1) EXPORTS OF UNPROCESSED LOGS.—Fed-
8 eral law (including regulations) relating to the ex-
9 port of unprocessed logs harvested from Federal
10 land shall apply to any unprocessed logs that are
11 harvested from the Council Creek land.

12 (2) NON-PERMISSIBLE USE OF LAND.—Any real
13 property taken into trust under section 392 shall not
14 be eligible, or used, for any gaming activity carried
15 out under Public Law 100–497 (25 U.S.C. 2701 et
16 seq.).

17 (c) FOREST MANAGEMENT.—Any forest management
18 activity that is carried out on the Council Creek land shall
19 be managed in accordance with all applicable Federal
20 laws.

21 **PART 2—OREGON COASTAL LAND CONVEYANCE**

22 **SEC. 395. DEFINITIONS.**

23 In this part:

24 (1) OREGON COASTAL LAND.—The term “Or-
25 egon Coastal land” means the approximately 14,804
26 acres of land, as generally depicted on the map enti-

1 tled “Oregon Coastal Land Conveyance” and dated
2 March 5, 2013.

3 (2) CONFEDERATED TRIBES.—The term “Con-
4 federated Tribes” means the Confederated Tribes of
5 Coos, Lower Umpqua, and Siuslaw Indians.

6 **SEC. 396. CONVEYANCE.**

7 (a) IN GENERAL.—Subject to valid existing rights,
8 including rights-of-way, all right, title, and interest of the
9 United States in and to the Oregon Coastal land, includ-
10 ing any improvements located on the land, appurtenances
11 to the land, and minerals on or in the land, including oil
12 and gas, shall be—

13 (1) held in trust by the United States for the
14 benefit of the Confederated Tribes; and

15 (2) part of the reservation of the Confederated
16 Tribes.

17 (b) SURVEY.—Not later than one year after the date
18 of enactment of this Act, the Secretary of the Interior
19 shall complete a survey of the boundary lines to establish
20 the boundaries of the land taken into trust under sub-
21 section (a).

22 **SEC. 397. MAP AND LEGAL DESCRIPTION.**

23 (a) IN GENERAL.—As soon as practicable after the
24 date of enactment of this Act, the Secretary of the Interior

1 shall file a map and legal description of the Oregon Coast-
2 al land with—

3 (1) the Committee on Energy and Natural Re-
4 sources of the Senate; and

5 (2) the Committee on Natural Resources of the
6 House of Representatives.

7 (b) FORCE AND EFFECT.—The map and legal de-
8 scription filed under subsection (a) shall have the same
9 force and effect as if included in this subdivision, except
10 that the Secretary of the Interior may correct any clerical
11 or typographical errors in the map or legal description.

12 (c) PUBLIC AVAILABILITY.—The map and legal de-
13 scription filed under subsection (a) shall be on file and
14 available for public inspection in the Office of the Sec-
15 retary of the Interior.

16 **SEC. 398. ADMINISTRATION.**

17 (a) IN GENERAL.—Unless expressly provided in this
18 part, nothing in this part affects any right or claim of
19 the Consolidated Tribes existing on the date of enactment
20 of this Act to any land or interest in land.

21 (b) PROHIBITIONS.—

22 (1) EXPORTS OF UNPROCESSED LOGS.—Fed-
23 eral law (including regulations) relating to the ex-
24 port of unprocessed logs harvested from Federal

1 land shall apply to any unprocessed logs that are
2 harvested from the Oregon Coastal land.

3 (2) NON-PERMISSIBLE USE OF LAND.—Any real
4 property taken into trust under section 396 shall not
5 be eligible, or used, for any gaming activity carried
6 out under Public Law 100–497 (25 U.S.C. 2701 et
7 seq.).

8 (c) FOREST MANAGEMENT.—Any forest management
9 activity that is carried out on the Oregon Coastal land
10 shall be managed in accordance with all applicable Federal
11 laws.

12 **TITLE IV—COMMUNITY FOREST** 13 **MANAGEMENT DEMONSTRATION**

14 **SEC. 401. PURPOSE AND DEFINITIONS.**

15 (a) PURPOSE.—The purpose of this title is to gen-
16 erate dependable economic activity for counties and local
17 governments by establishing a demonstration program for
18 local, sustainable forest management.

19 (b) DEFINITIONS.—In this title:

20 (1) ADVISORY COMMITTEE.—The term “Advi-
21 sory Committee” means the Advisory Committee ap-
22 pointed by the Governor of a State for the commu-
23 nity forest demonstration area established for the
24 State.

1 (2) COMMUNITY FOREST DEMONSTRATION
2 AREA.—The term “community forest demonstration
3 area” means a community forest demonstration area
4 established for a State under section 402.

5 (3) NATIONAL FOREST SYSTEM.—The term
6 “National Forest System” has the meaning given
7 that term in section 11(a) of the Forest and Range-
8 land Renewable Resources Planning Act of 1974 (16
9 U.S.C. 1609(a)), except that the term does not in-
10 clude the National Grasslands and land utilization
11 projects designated as National Grasslands adminis-
12 tered pursuant to the Act of July 22, 1937 (7
13 U.S.C. 1010–1012).

14 (4) SECRETARY.—The term “Secretary” means
15 the Secretary of Agriculture or the designee of the
16 Secretary of Agriculture.

17 (5) STATE.—The term “State” includes the
18 Commonwealth of Puerto Rico.

19 **SEC. 402. ESTABLISHMENT OF COMMUNITY FOREST DEM-**
20 **ONSTRATION AREAS.**

21 (a) ESTABLISHMENT REQUIRED; TIME FOR ESTAB-
22 LISHMENT.—Subject to subsection (c) and not later than
23 one year after the date of the enactment of this Act, the
24 Secretary of Agriculture shall establish a community for-
25 est demonstration area at the request of the Advisory

1 Committee appointed to manage community forest dem-
2 onstration area land in that State.

3 (b) COVERED LAND.—

4 (1) INCLUSION OF NATIONAL FOREST SYSTEM
5 LAND.—The community forest demonstration areas
6 of a State shall consist of the National Forest Sys-
7 tem land in the State identified for inclusion by the
8 Advisory Committee of that State.

9 (2) EXCLUSION OF CERTAIN LAND.—A commu-
10 nity forest demonstration area shall not include Na-
11 tional Forest System land—

12 (A) that is a component of the National
13 Wilderness Preservation System;

14 (B) on which the removal of vegetation is
15 specifically prohibited by Federal statute;

16 (C) National Monuments; or

17 (D) over which administration jurisdiction
18 was first assumed by the Forest Service under
19 title III.

20 (c) CONDITIONS ON ESTABLISHMENT.—

21 (1) ACREAGE REQUIREMENT.—A community
22 forest demonstration area must include at least
23 200,000 acres of National Forest System land. If
24 the unit of the National Forest System in which a
25 community forest demonstration area is being estab-

1 lished contains more than 5,000,000 acres, the com-
2 munity forest demonstration area may include
3 900,000 or more acres of National Forest System
4 land.

5 (2) MANAGEMENT LAW OR BEST MANAGEMENT
6 PRACTICES REQUIREMENT.—A community forest
7 demonstration area may be established in a State
8 only if the State—

9 (A) has a forest practices law applicable to
10 State or privately owned forest land in the
11 State; or

12 (B) has established silvicultural best man-
13 agement practices or other regulations for for-
14 est management practices related to clean
15 water, soil quality, wildlife or forest health.

16 (3) REVENUE SHARING REQUIREMENT.—As a
17 condition of the inclusion in a community forest
18 demonstration area of National Forest System land
19 located in a particular county in a State, the county
20 must enter into an agreement with the Governor of
21 the State that requires that, in utilizing revenues re-
22 ceived by the county under section 406(b), the coun-
23 ty shall continue to meet any obligations under ap-
24 plicable State law as provided under title I of the
25 Secure Rural Schools and Community Self-Deter-

1 mination Act of 2000 (16 U.S.C. 7111 et seq.) or
2 as provided in the sixth paragraph under the head-
3 ing “FOREST SERVICE” in the Act of May 23,
4 1908 (16 U.S.C. 500) and section 13 of the Act of
5 March 1, 1911 (16 U.S.C. 500).

6 (d) TREATMENT UNDER CERTAIN OTHER LAWS.—
7 National Forest System land included in a community for-
8 est demonstration area shall not be considered Federal
9 land for purposes of—

10 (1) making payments to counties under the
11 sixth paragraph under the heading “FOREST
12 SERVICE” in the Act of May 23, 1908 (16 U.S.C.
13 500) and section 13 of the Act of March 1, 1911
14 (16 U.S.C. 500); or

15 (2) title I.

16 (e) ACREAGE LIMITATION.—Not more than a total
17 of 4,000,000 acres of National Forest System land may
18 be established as community forest demonstration areas.

19 (f) RECOGNITION OF VALID AND EXISTING
20 RIGHTS.—Nothing in this title shall be construed to limit
21 or restrict—

22 (1) access to National Forest System land in-
23 cluded in a community forest demonstration area for
24 hunting, fishing, and other related purposes; or

1 (2) valid and existing rights regarding such Na-
2 tional Forest System land, including rights of any
3 federally recognized Indian tribe.

4 **SEC. 403. ADVISORY COMMITTEE.**

5 (a) APPOINTMENT.—A community forest demonstra-
6 tion area for a State shall be managed by an Advisory
7 Committee appointed by the Governor of the State.

8 (b) COMPOSITION.—The Advisory Committee for a
9 community forest demonstration area in a State shall in-
10 clude, but is not limited to, the following members:

11 (1) One member who holds county or local
12 elected office, appointed from each county or local
13 governmental unit in the State containing commu-
14 nity forest demonstration area land.

15 (2) One member who represents the commercial
16 timber, wood products, or milling industry.

17 (3) One member who represents persons hold-
18 ing Federal grazing or other land use permits.

19 (4) One member who represents recreational
20 users of National Forest System land.

21 (c) TERMS.—

22 (1) IN GENERAL.—Except in the case of certain
23 initial appointments required by paragraph (2),
24 members of an Advisory Committee shall serve for
25 a term of three years.

1 (2) INITIAL APPOINTMENTS.—In making initial
2 appointments to an Advisory Committee, the Gov-
3 ernor making the appointments shall stagger terms
4 so that at least one-third of the members will be re-
5 placed every three years.

6 (d) COMPENSATION.—Members of a Advisory Com-
7 mittee shall serve without pay, but may be reimbursed
8 from the funds made available for the management of a
9 community forest demonstration area for the actual and
10 necessary travel and subsistence expenses incurred by
11 members in the performance of their duties.

12 **SEC. 404. MANAGEMENT OF COMMUNITY FOREST DEM-**
13 **ONSTRATION AREAS.**

14 (a) ASSUMPTION OF MANAGEMENT.—

15 (1) CONFIRMATION.—The Advisory Committee
16 appointed for a community forest demonstration
17 area shall assume all management authority with re-
18 gard to the community forest demonstration area as
19 soon as the Secretary confirms that—

20 (A) the National Forest System land to be
21 included in the community forest demonstration
22 area meets the requirements of subsections (b)
23 and (c) of section 402;

1 (B) the Advisory Committee has been duly
2 appointed under section 403 and is able to con-
3 duct business; and

4 (C) provision has been made for essential
5 management services for the community forest
6 demonstration area.

7 (2) SCOPE AND TIME FOR CONFIRMATION.—
8 The determination of the Secretary under paragraph
9 (1) is limited to confirming whether the conditions
10 specified in subparagraphs (A) and (B) of such
11 paragraph have been satisfied. The Secretary shall
12 make the determination not later than 60 days after
13 the date of the appointment of the Advisory Com-
14 mittee.

15 (3) EFFECT OF FAILURE TO CONFIRM.—If the
16 Secretary determines that either or both conditions
17 specified in subparagraphs (A) and (B) of paragraph
18 (1) are not satisfied for confirmation of an Advisory
19 Committee, the Secretary shall—

20 (A) promptly notify the Governor of the af-
21 fected State and the Advisory Committee of the
22 reasons preventing confirmation; and

23 (B) make a new determination under para-
24 graph (2) within 60 days after receiving a new
25 request from the Advisory Committee that ad-

1 dresses the reasons that previously prevented
2 confirmation.

3 (b) MANAGEMENT RESPONSIBILITIES.—Upon as-
4 sumption of management of a community forest dem-
5 onstration area, the Advisory Committee for the commu-
6 nity forest demonstration area shall manage the land and
7 resources of the community forest demonstration area and
8 the occupancy and use thereof in conformity with this
9 title, and to the extent not in conflict with this title, the
10 laws and regulations applicable to management of State
11 or privately-owned forest lands in the State in which the
12 community forest demonstration area is located.

13 (c) APPLICABILITY OF OTHER FEDERAL LAWS.—

14 (1) IN GENERAL.—The administration and
15 management of a community forest demonstration
16 area, including implementing actions, shall not be
17 considered Federal action and shall be subject to the
18 following only to the extent that such laws apply to
19 the State or private administration and management
20 of forest lands in the State in which the community
21 forest demonstration area is located:

22 (A) The Federal Water Pollution Control
23 Act (33 U.S.C. 1251 note).

24 (B) The Clean Air Act (42 U.S.C. 7401 et
25 seq.).

1 (C) The Endangered Species Act of 1973
2 (16 U.S.C. 1531 et seq.).

3 (D) Federal laws and regulations gov-
4 erning procurement by Federal agencies.

5 (E) Except as provided in paragraph (2),
6 other Federal laws.

7 (2) APPLICABILITY OF NATIVE AMERICAN
8 GRAVES PROTECTION AND REPATRIATION ACT.—
9 Notwithstanding the assumption by an Advisory
10 Committee of management of a community forest
11 demonstration area, the Native American Graves
12 Protection and Repatriation Act (25 U.S.C. 3001 et
13 seq.) shall continue to apply to the National Forest
14 System land included in the community forest dem-
15 onstration area.

16 (d) CONSULTATION.—

17 (1) WITH INDIAN TRIBES.—The Advisory Com-
18 mittee for a community forest demonstration area
19 shall cooperate and consult with Indian tribes on
20 management policies and practices for the commu-
21 nity forest demonstration area that may affect the
22 Indian tribes. The Advisory Committee shall take
23 into consideration the use of lands within the com-
24 munity forest demonstration area for religious and
25 cultural uses by Native Americans.

1 fund the management, administration, restoration, oper-
2 ation and maintenance, improvement, repair, and related
3 expenses incurred with respect to the community forest
4 demonstration area.

5 (b) FUNDS TO COUNTIES OR LOCAL GOVERNMENTAL
6 UNITS.—Subject to subsection (a) and section 407, the
7 Advisory Committee for a community forest demonstra-
8 tion area in a State shall distribute funds generated from
9 that community forest demonstration area to each county
10 or local governmental unit in the State in an amount pro-
11 portional to the funds received by the county or local gov-
12 ernmental unit under title I of the Secure Rural Schools
13 and Community Self-Determination Act of 2000 (16
14 U.S.C. 7111 et seq.).

15 **SEC. 406. INITIAL FUNDING AUTHORITY.**

16 (a) FUNDING SOURCE.—Counties may use such sum
17 as the counties consider to be necessary from the amounts
18 made available to the counties under section 501 to pro-
19 vide initial funding for the management of community for-
20 est demonstration areas.

21 (b) NO RESTRICTION ON USE OF NON-FEDERAL
22 FUNDS.—Nothing in this title restricts the Advisory Com-
23 mittee of a community forest demonstration area from
24 seeking non-Federal loans or other non-Federal funds for
25 management of the community forest demonstration area.

1 **SEC. 407. PAYMENTS TO UNITED STATES TREASURY.**

2 (a) **PAYMENT REQUIREMENT.**—As soon as prac-
3 ticable after the end of the fiscal year in which a commu-
4 nity forest demonstration area is established and as soon
5 as practicable after the end of each subsequent fiscal year,
6 the Advisory Committee for a community forest dem-
7 onstration area shall make a payment to the United States
8 Treasury.

9 (b) **PAYMENT AMOUNT.**—The payment for a fiscal
10 year under subsection (a) with respect to a community for-
11 est demonstration area shall be equal to 75 percent of the
12 quotient obtained by dividing—

13 (1) the number obtained by multiplying the
14 number of acres of land in the community forest
15 demonstration area by the average annual receipts
16 generated over the preceding 10-fiscal year period
17 from the unit or units of the National Forest Sys-
18 tem containing that community forest demonstration
19 area; by

20 (2) the total acres of National Forest System
21 land in that unit or units of the National Forest
22 System.

23 **SEC. 408. TERMINATION OF COMMUNITY FOREST DEM-**
24 **ONSTRATION AREA.**

25 (a) **TERMINATION AUTHORITY.**—Subject to approval
26 by the Governor of the State, the Advisory Committee for

1 a community forest demonstration area may terminate the
2 community forest demonstration area by a unanimous
3 vote.

4 (b) EFFECT OF TERMINATION.—Upon termination of
5 a community forest demonstration area, the Secretary
6 shall immediately resume management of the National
7 Forest System land that had been included in the commu-
8 nity forest demonstration area, and the Advisory Com-
9 mittee shall be dissolved.

10 (c) TREATMENT OF UNDISTRIBUTED FUNDS.—Any
11 revenues from the terminated area that remain undistrib-
12 uted under section 405 more than 30 days after the date
13 of termination shall be deposited in the general fund of
14 the Treasury for use by the Forest Service in such
15 amounts as may be provided in advance in appropriation
16 Acts.

1 **TITLE V—REAUTHORIZATION**
2 **AND AMENDMENT OF EXIST-**
3 **ING AUTHORITIES AND**
4 **OTHER MATTERS**

5 **SEC. 501. EXTENSION OF SECURE RURAL SCHOOLS AND**
6 **COMMUNITY SELF-DETERMINATION ACT OF**
7 **2000 PENDING FULL OPERATION OF FOREST**
8 **RESERVE REVENUE AREAS.**

9 (a) **BENEFICIARY COUNTIES.**—During the month of
10 February 2015, the Secretary of Agriculture shall dis-
11 tribute to each beneficiary county (as defined in section
12 102(2)) a payment equal to the amount distributed to the
13 beneficiary county for fiscal year 2010 under section
14 102(c)(1) of the Secure Rural Schools and Community
15 Self-Determination Act of 2000 (16 U.S.C. 7112(c)(1)).

16 (b) **COUNTIES THAT WERE ELIGIBLE FOR DIRECT**
17 **COUNTY PAYMENTS.**—

18 (1) **TOTAL AMOUNT AVAILABLE FOR PAY-**
19 **MENTS.**—During the month of February 2015, the
20 Secretary of the Interior shall distribute to all coun-
21 ties that received a payment for fiscal year 2010
22 under subsection (a)(2) of section 102 of the Secure
23 Rural Schools and Community Self-Determination
24 Act of 2000 (16 U.S.C. 7112) payments in a total
25 amount equal to the difference between—

1 (A) the total amount distributed to all
2 such counties for fiscal year 2010 under sub-
3 section (c)(1) of such section; and

4 (B) \$27,000,000.

5 (2) COUNTY SHARE.—From the total amount
6 determined under paragraph (1), each county de-
7 scribed in such paragraph shall receive, during the
8 month of February 2015, an amount that bears the
9 same proportion to the total amount made available
10 under such paragraph as that county's payment for
11 fiscal year 2010 under subsection (c)(1) of section
12 102 of the Secure Rural Schools and Community
13 Self-Determination Act of 2000 (16 U.S.C. 7112)
14 bears to the total amount distributed to all such
15 counties for fiscal year 2010 under such subsection.

16 (c) EFFECT ON 25-PERCENT AND 50-PERCENT PAY-
17 MENTS.—A county that receives a payment made under
18 subsection (a) or (b) may not receive a 25-percent pay-
19 ment or 50-percent payment (as those terms are defined
20 in section 3 of the Secure Rural Schools and Community
21 Self-Determination Act of 2000 (16 U.S.C. 7102)) for fis-
22 cal year 2015.

1 **SEC. 502. RESTORING ORIGINAL CALCULATION METHOD**
2 **FOR 25-PERCENT PAYMENTS.**

3 (a) AMENDMENT OF ACT OF MAY 23, 1908.—The
4 sixth paragraph under the heading “FOREST SERV-
5 ICE” in the Act of May 23, 1908 (16 U.S.C. 500) is
6 amended in the first sentence—

7 (1) by striking “the annual average of 25 per-
8 cent of all amounts received for the applicable fiscal
9 year and each of the preceding 6 fiscal years” and
10 inserting “25 percent of all amounts received for the
11 applicable fiscal year”;

12 (2) by striking “said reserve” both places it ap-
13 pears and inserting “the national forest”; and

14 (3) by striking “forest reserve” both places it
15 appears and inserting “national forest”.

16 (b) CONFORMING AMENDMENT TO WEEKS LAW.—
17 Section 13 of the Act of March 1, 1911 (commonly known
18 as the Weeks Law; 16 U.S.C. 500) is amended in the first
19 sentence by striking “the annual average of 25 percent
20 of all amounts received for the applicable fiscal year and
21 each of the preceding 6 fiscal years” and inserting “25
22 percent of all amounts received for the applicable fiscal
23 year”.

1 **SEC. 503. FOREST SERVICE AND BUREAU OF LAND MAN-**
2 **AGEMENT GOOD-NEIGHBOR COOPERATION**
3 **WITH STATES TO REDUCE WILDFIRE RISKS.**

4 (a) DEFINITIONS.—In this section:

5 (1) ELIGIBLE STATE.—The term “eligible
6 State” means a State that contains National Forest
7 System land or land under the jurisdiction of the
8 Bureau of Land Management.

9 (2) SECRETARY.—The term “Secretary”
10 means—

11 (A) the Secretary of Agriculture, with re-
12 spect to National Forest System land; or

13 (B) the Secretary of the Interior, with re-
14 spect to land under the jurisdiction of the Bu-
15 reau of Land Management.

16 (3) STATE FORESTER.—The term “State for-
17 ester” means the head of a State agency with juris-
18 diction over State forestry programs in an eligible
19 State.

20 (b) COOPERATIVE AGREEMENTS AND CONTRACTS
21 AUTHORIZED.—The Secretary may enter into a coopera-
22 tive agreement or contract (including a sole source con-
23 tract) with a State forester to authorize the State forester
24 to provide the forest, rangeland, and watershed restora-
25 tion, management, and protection services described in
26 subsection (c) on National Forest System land or land

1 under the jurisdiction of the Bureau of Land Manage-
2 ment, as applicable, in the eligible State.

3 (c) AUTHORIZED SERVICES.—The forest, rangeland,
4 and watershed restoration, management, and protection
5 services referred to in subsection (b) include the conduct
6 of—

7 (1) activities to treat insect infected forests;

8 (2) activities to reduce hazardous fuels;

9 (3) activities involving commercial harvesting or
10 other mechanical vegetative treatments; or

11 (4) any other activities to restore or improve
12 forest, rangeland, and watershed health, including
13 fish and wildlife habitat.

14 (d) STATE AS AGENT.—Except as provided in sub-
15 section (g), a cooperative agreement or contract entered
16 into under subsection (b) may authorize the State forester
17 to serve as the agent for the Secretary in providing the
18 restoration, management, and protection services author-
19 ized under subsection (b).

20 (e) SUBCONTRACTS.—In accordance with applicable
21 contract procedures for the eligible State, a State forester
22 may enter into subcontracts to provide the restoration,
23 management, and protection services authorized under a
24 cooperative agreement or contract entered into under sub-
25 section (b).

1 (f) **TIMBER SALES.**—Subsections (d) and (g) of sec-
2 tion 14 of the National Forest Management Act of 1976
3 (16 U.S.C. 472a) shall not apply to services performed
4 under a cooperative agreement or contract entered into
5 under subsection (b).

6 (g) **RETENTION OF NEPA RESPONSIBILITIES.**—Any
7 decision required to be made under the National Environ-
8 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with
9 respect to any restoration, management, or protection
10 services to be provided under this section by a State for-
11 ester on National Forest System land or Bureau of Land
12 Management land, as applicable, shall not be delegated to
13 a State forester or any other officer or employee of the
14 eligible State.

15 (h) **APPLICABLE LAW.**—The restoration, manage-
16 ment, and protection services to be provided under this
17 section shall be carried out on a project-to-project basis
18 under existing authorities of the Forest Service or Bureau
19 of Land Management, as applicable.

20 **SEC. 504. TREATMENT AS SUPPLEMENTAL FUNDING.**

21 None of the funds made available to a beneficiary
22 county (as defined in section 102(2)) or other political
23 subdivision of a State under this subdivision shall be used
24 in lieu of or to otherwise offset State funding sources for
25 local schools, facilities, or educational purposes.

1 **SEC. 505. DEFINITION OF FIRE SUPPRESSION TO INCLUDE**
2 **CERTAIN RELATED ACTIVITIES.**

3 For purposes of utilizing amounts made available to
4 the Secretary of Agriculture or the Secretary of the Inte-
5 rior for fire suppression activities, including funds made
6 available from the FLAME Fund, the term “fire suppres-
7 sion” includes reforestation, site rehabilitation, salvage op-
8 erations, and replanting occurring following fire damage
9 on lands under the jurisdiction of the Secretary concerned
10 or following fire suppression efforts on such lands by the
11 Secretary concerned.

12 **SEC. 506. PROHIBITION ON CERTAIN ACTIONS REGARDING**
13 **FOREST SERVICE ROADS AND TRAILS.**

14 The Forest Service shall not remove or otherwise
15 eliminate or obliterate any legally created road or trail un-
16 less there has been a specific decision, which included ade-
17 quate and appropriate public involvement, to decommis-
18 sion the specific road or trail in question. The fact that
19 any road or trail is a not a Forest System road or trail,
20 or does not appear on a Motor Vehicle Use Map, shall
21 not constitute a decision.

1 **SUBDIVISION B—NATIONAL**
2 **STRATEGIC AND CRITICAL**
3 **MINERALS PRODUCTION**

4 **SEC. 100. SHORT TITLE.**

5 This subdivision may be cited as the “National Stra-
6 tegic and Critical Minerals Production Act of 2014”.

7 **SEC. 100A. FINDINGS.**

8 Congress finds the following:

9 (1) The industrialization of China and India
10 has driven demand for nonfuel mineral commodities,
11 sparking a period of resource nationalism exempli-
12 fied by China’s reduction in exports of rare-earth
13 elements necessary for telecommunications, military
14 technologies, healthcare technologies, and conven-
15 tional and renewable energy technologies.

16 (2) The availability of minerals and mineral
17 materials are essential for economic growth, national
18 security, technological innovation, and the manufac-
19 turing and agricultural supply chain.

20 (3) The exploration, production, processing,
21 use, and recycling of minerals contribute signifi-
22 cantly to the economic well-being, security and gen-
23 eral welfare of the Nation.

24 (4) The United States has vast mineral re-
25 sources, but is becoming increasingly dependent

1 upon foreign sources of these mineral materials, as
2 demonstrated by the following:

3 (A) Twenty-five years ago the United
4 States was dependent on foreign sources for 30
5 nonfuel mineral materials, 6 of which the
6 United States imported 100 percent of the Na-
7 tion's requirements, and for another 16 com-
8 modities the United States imported more than
9 60 percent of the Nation's needs.

10 (B) By 2011 the United States import de-
11 pendence for nonfuel mineral materials had
12 more than doubled from 30 to 67 commodities,
13 19 of which the United States imported 100
14 percent of the Nation's requirements, and for
15 another 24 commodities, imported more than
16 50 percent of the Nation's needs.

17 (C) The United States share of worldwide
18 mineral exploration dollars was 8 percent in
19 2011, down from 19 percent in the early 1990s.

20 (D) In the 2012 Ranking of Countries for
21 Mining Investment, out of 25 major mining
22 countries, the United States ranked last with
23 Papua New Guinea in permitting delays, and
24 towards the bottom regarding government take
25 and social issues affecting mining.

1 **SEC. 100B. DEFINITIONS.**

2 In this subdivision:

3 (1) STRATEGIC AND CRITICAL MINERALS.—The
4 term “strategic and critical minerals” means min-
5 erals that are necessary—

6 (A) for national defense and national secu-
7 rity requirements;

8 (B) for the Nation’s energy infrastructure,
9 including pipelines, refining capacity, electrical
10 power generation and transmission, and renew-
11 able energy production;

12 (C) to support domestic manufacturing,
13 agriculture, housing, telecommunications,
14 healthcare, and transportation infrastructure;
15 or

16 (D) for the Nation’s economic security and
17 balance of trade.

18 (2) AGENCY.—The term “agency” means any
19 agency, department, or other unit of Federal, State,
20 local, or tribal government, or Alaska Native Cor-
21 poration.

22 (3) MINERAL EXPLORATION OR MINE PER-
23 MIT.—The term “mineral exploration or mine per-
24 mit” includes plans of operation issued by the Bu-
25 reau of Land Management and the Forest Service

1 pursuant to 43 CFR 3809 and 36 CFR 228A or the
2 authorities listed in 43 CFR 3503.13, respectively.

3 **TITLE I—DEVELOPMENT OF DO-**
4 **MESTIC SOURCES OF STRA-**
5 **TEGIC AND CRITICAL MIN-**
6 **ERALS**

7 **SEC. 101. IMPROVING DEVELOPMENT OF STRATEGIC AND**
8 **CRITICAL MINERALS.**

9 Domestic mines that will provide strategic and crit-
10 ical minerals shall be considered an “infrastructure
11 project” as described in Presidential Order “Improving
12 Performance of Federal Permitting and Review of Infra-
13 structure Projects” dated March 22, 2012.

14 **SEC. 102. RESPONSIBILITIES OF THE LEAD AGENCY.**

15 (a) IN GENERAL.—The lead agency with responsi-
16 bility for issuing a mineral exploration or mine permit
17 shall appoint a project lead who shall coordinate and con-
18 sult with cooperating agencies and any other agency in-
19 volved in the permitting process, project proponents and
20 contractors to ensure that agencies minimize delays, set
21 and adhere to timelines and schedules for completion of
22 the permitting process, set clear permitting goals and
23 track progress against those goals.

24 (b) DETERMINATION UNDER NEPA.—To the extent
25 that the National Environmental Policy Act of 1969 ap-

1 plies to any mineral exploration or mine permit, the lead
2 agency with responsibility for issuing a mineral explo-
3 ration or mine permit shall determine that the action to
4 approve the exploration or mine permit does not constitute
5 a major Federal action significantly affecting the quality
6 of the human environment within the meaning of the Na-
7 tional Environmental Policy Act of 1969 if the procedural
8 and substantive safeguards of the permitting process
9 alone, any applicable State permitting process alone, or
10 a combination of the two processes together provide an
11 adequate mechanism to ensure that environmental factors
12 are taken into account.

13 (c) COORDINATION ON PERMITTING PROCESS.—The
14 lead agency with responsibility for issuing a mineral explo-
15 ration or mine permit shall enhance government coordina-
16 tion for the permitting process by avoiding duplicative re-
17 views, minimizing paperwork and engaging other agencies
18 and stakeholders early in the process. The lead agency
19 shall consider the following best practices:

20 (1) Deferring to and relying upon baseline data,
21 analyses and reviews performed by State agencies
22 with jurisdiction over the proposed project.

23 (2) Conducting any consultations or reviews
24 concurrently rather than sequentially to the extent

1 practicable and when such concurrent review will ex-
2 pedite rather than delay a decision.

3 (d) SCHEDULE FOR PERMITTING PROCESS.—At the
4 request of a project proponent, the lead agency, cooper-
5 ating agencies and any other agencies involved with the
6 mineral exploration or mine permitting process shall enter
7 into an agreement with the project proponent that sets
8 time limits for each part of the permitting process includ-
9 ing the following:

10 (1) The decision on whether to prepare a docu-
11 ment required under the National Environmental
12 Policy Act of 1969.

13 (2) A determination of the scope of any docu-
14 ment required under the National Environmental
15 Policy Act of 1969.

16 (3) The scope of and schedule for the baseline
17 studies required to prepare a document required
18 under the National Environmental Policy Act of
19 1969.

20 (4) Preparation of any draft document required
21 under the National Environmental Policy Act of
22 1969.

23 (5) Preparation of a final document required
24 under the National Environmental Policy Act of
25 1969.

1 (6) Consultations required under applicable
2 laws.

3 (7) Submission and review of any comments re-
4 quired under applicable law.

5 (8) Publication of any public notices required
6 under applicable law.

7 (9) A final or any interim decisions.

8 (e) TIME LIMIT FOR PERMITTING PROCESS.—In no
9 case should the total review process described in sub-
10 section (d) exceed 30 months unless agreed to by the sig-
11 natories of the agreement.

12 (f) LIMITATION ON ADDRESSING PUBLIC COM-
13 MENTS.—The lead agency is not required to address agen-
14 cy or public comments that were not submitted during any
15 public comment periods or consultation periods provided
16 during the permitting process or as otherwise required by
17 law.

18 (g) FINANCIAL ASSURANCE.—The lead agency will
19 determine the amount of financial assurance for reclama-
20 tion of a mineral exploration or mining site, which must
21 cover the estimated cost if the lead agency were to con-
22 tract with a third party to reclaim the operations accord-
23 ing to the reclamation plan, including construction and
24 maintenance costs for any treatment facilities necessary
25 to meet Federal, State or tribal environmental standards.

1 (h) APPLICATION TO EXISTING PERMIT APPLICA-
2 TIONS.—This section shall apply with respect to a mineral
3 exploration or mine permit for which an application was
4 submitted before the date of the enactment of this Act
5 if the applicant for the permit submits a written request
6 to the lead agency for the permit. The lead agency shall
7 begin implementing this section with respect to such appli-
8 cation within 30 days after receiving such written request.

9 (i) STRATEGIC AND CRITICAL MINERALS WITHIN
10 NATIONAL FORESTS.—With respect to strategic and crit-
11 ical minerals within a federally administered unit of the
12 National Forest System, the lead agency shall—

13 (1) exempt all areas of identified mineral re-
14 sources in Land Use Designations, other than Non-
15 Development Land Use Designations, in existence as
16 of the date of the enactment of this Act from the
17 procedures detailed at and all rules promulgated
18 under part 294 of title 36, Code for Federal Regula-
19 tions;

20 (2) apply such exemption to all additional
21 routes and areas that the lead agency finds nec-
22 essary to facilitate the construction, operation, main-
23 tenance, and restoration of the areas of identified
24 mineral resources described in paragraph (1); and

1 (3) continue to apply such exemptions after ap-
2 proval of the Minerals Plan of Operations for the
3 unit of the National Forest System.

4 **SEC. 103. CONSERVATION OF THE RESOURCE.**

5 In evaluating and issuing any mineral exploration or
6 mine permit, the priority of the lead agency shall be to
7 maximize the development of the mineral resource, while
8 mitigating environmental impacts, so that more of the
9 mineral resource can be brought to the market place.

10 **SEC. 104. FEDERAL REGISTER PROCESS FOR MINERAL EX-**
11 **PLORATION AND MINING PROJECTS.**

12 (a) PREPARATION OF FEDERAL NOTICES FOR MIN-
13 ERAL EXPLORATION AND MINE DEVELOPMENT
14 PROJECTS.—The preparation of Federal Register notices
15 required by law associated with the issuance of a mineral
16 exploration or mine permit shall be delegated to the orga-
17 nization level within the agency responsible for issuing the
18 mineral exploration or mine permit. All Federal Register
19 notices regarding official document availability, announce-
20 ments of meetings, or notices of intent to undertake an
21 action shall be originated and transmitted to the Federal
22 Register from the office where documents are held, meet-
23 ings are held, or the activity is initiated.

24 (b) DEPARTMENTAL REVIEW OF FEDERAL REG-
25 ISTER NOTICES FOR MINERAL EXPLORATION AND MIN-

1 ING PROJECTS.—Absent any extraordinary circumstance
2 or except as otherwise required by any Act of Congress,
3 each Federal Register notice described in subsection (a)
4 shall undergo any required reviews within the Department
5 of the Interior or the Department of Agriculture and be
6 published in its final form in the Federal Register no later
7 than 30 days after its initial preparation.

8 **TITLE II—JUDICIAL REVIEW OF**
9 **AGENCY ACTIONS RELATING**
10 **TO EXPLORATION AND MINE**
11 **PERMITS**

12 **SEC. 201. DEFINITIONS FOR TITLE.**

13 In this title the term “covered civil action” means a
14 civil action against the Federal Government containing a
15 claim under section 702 of title 5, United States Code,
16 regarding agency action affecting a mineral exploration or
17 mine permit.

18 **SEC. 202. TIMELY FILINGS.**

19 A covered civil action is barred unless filed no later
20 than the end of the 60-day period beginning on the date
21 of the final Federal agency action to which it relates.

22 **SEC. 203. RIGHT TO INTERVENE.**

23 The holder of any mineral exploration or mine permit
24 may intervene as of right in any covered civil action by

1 a person affecting rights or obligations of the permit hold-
2 er under the permit.

3 **SEC. 204. EXPEDITION IN HEARING AND DETERMINING THE**
4 **ACTION.**

5 The court shall endeavor to hear and determine any
6 covered civil action as expeditiously as possible.

7 **SEC. 205. LIMITATION ON PROSPECTIVE RELIEF.**

8 In a covered civil action, the court shall not grant
9 or approve any prospective relief unless the court finds
10 that such relief is narrowly drawn, extends no further than
11 necessary to correct the violation of a legal requirement,
12 and is the least intrusive means necessary to correct that
13 violation.

14 **SEC. 206. LIMITATION ON ATTORNEYS' FEES.**

15 Sections 504 of title 5, United States Code, and 2412
16 of title 28, United States Code (together commonly called
17 the Equal Access to Justice Act) do not apply to a covered
18 civil action, nor shall any party in such a covered civil ac-
19 tion receive payment from the Federal Government for
20 their attorneys' fees, expenses, and other court costs.

21 **TITLE III—MISCELLANEOUS**
22 **PROVISIONS**

23 **SEC. 301. SECRETARIAL ORDER NOT AFFECTED.**

24 Nothing in this subdivision shall be construed as to
25 affect any aspect of Secretarial Order 3324, issued by the

- 1 Secretary of the Interior on December 3, 2012, with re-
- 2 spect to potash and oil and gas operators.

Passed the House of Representatives September 18,
2014.

Attest:

Clerk.

113TH CONGRESS
2^D SESSION

H. R. 4

AN ACT

To make revisions to Federal law to improve the conditions necessary for economic growth and job creation, and for other purposes.