

## Calendar No. 597

113TH CONGRESS  
2D SESSION**H. R. 4**

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 12, 2014

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**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,*

3 **SECTION 1. SHORT TITLE.**

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

5 **SEC. 2. TABLE OF CONTENTS.**

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

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

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.
- Sec. 702. Budgetary effects.

DIVISION II—FINANCIAL SERVICES

TITLE I—SMALL BUSINESS CAPITAL ACCESS AND JOB PRESERVATION

- Sec. 101. Short title.
- Sec. 102. Registration and reporting exemptions relating to private equity funds advisors.

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

- Sec. 201. Short title.

- Sec. 202. Registration exemption for merger and acquisition brokers.  
 Sec. 203. Effective date.

### DIVISION III—OVERSIGHT

#### SUBDIVISION A—UNFUNDED MANDATES INFORMATION AND TRANSPARENCY

- Sec. 101. Short title.  
 Sec. 102. Purpose.  
 Sec. 103. Providing for Congressional Budget Office studies on policies involving changes in conditions of grant aid.  
 Sec. 104. Clarifying the definition of direct costs to reflect Congressional Budget Office practice.  
 Sec. 105. Expanding the scope of reporting requirements to include regulations imposed by independent regulatory agencies.  
 Sec. 106. Amendments to replace Office of Management and Budget with Office of Information and Regulatory Affairs.  
 Sec. 107. Applying substantive point of order to private sector mandates.  
 Sec. 108. Regulatory process and principles.  
 Sec. 109. Expanding the scope of statements to accompany significant regulatory actions.  
 Sec. 110. Enhanced stakeholder consultation.  
 Sec. 111. New authorities and responsibilities for Office of Information and Regulatory Affairs.  
 Sec. 112. Retrospective analysis of existing Federal regulations.  
 Sec. 113. Expansion of judicial review.

#### SUBDIVISION B—ACHIEVING LESS EXCESS IN REGULATION AND REQUIRING TRANSPARENCY

- Sec. 100. Short title; table of contents.

#### TITLE I—ALL ECONOMIC REGULATIONS ARE TRANSPARENT ACT

- Sec. 101. Short title.  
 Sec. 102. Office of Information and Regulatory Affairs publication of information relating to rules.

#### TITLE II—REGULATORY ACCOUNTABILITY ACT

- Sec. 201. Short title.  
 Sec. 202. Definitions.  
 Sec. 203. Rule making.  
 Sec. 204. Agency guidance; procedures to issue major guidance; presidential authority to issue guidelines for issuance of guidance.  
 Sec. 205. Hearings; presiding employees; powers and duties; burden of proof; evidence; record as basis of decision.  
 Sec. 206. Actions reviewable.  
 Sec. 207. Scope of review.  
 Sec. 208. Added definition.  
 Sec. 209. Effective date.

#### TITLE III—REGULATORY FLEXIBILITY IMPROVEMENTS ACT

- Sec. 301. Short title.  
 Sec. 302. Clarification and expansion of rules covered by the Regulatory Flexibility Act.  
 Sec. 303. Expansion of report of regulatory agenda.

- Sec. 304. Requirements providing for more detailed analyses.
- Sec. 305. Repeal of waiver and delay authority; additional powers of the Chief Counsel for Advocacy.
- Sec. 306. Procedures for gathering comments.
- Sec. 307. Periodic review of rules.
- Sec. 308. Judicial review of compliance with the requirements of the Regulatory Flexibility Act available after publication of the final rule.
- Sec. 309. Jurisdiction of court of appeals over rules implementing the Regulatory Flexibility Act.
- Sec. 310. Establishment and approval of small business concern size standards by Chief Counsel for Advocacy.
- Sec. 311. Clerical amendments.
- Sec. 312. Agency preparation of guides.
- Sec. 313. Comptroller General report.

#### TITLE IV—SUNSHINE FOR REGULATORY DECREES AND SETTLEMENTS ACT

- Sec. 401. Short title.
- Sec. 402. Definitions.
- Sec. 403. Consent decree and settlement reform.
- Sec. 404. Motions to modify consent decrees.
- Sec. 405. Effective date.

#### DIVISION IV—JUDICIARY

##### TITLE I—REGULATIONS FROM THE EXECUTIVE IN NEED OF SCRUTINY

- Sec. 101. Short title.
- Sec. 102. Purpose.
- Sec. 103. Congressional review of agency rulemaking.
- Sec. 104. Budgetary effects of rules subject to section 802 of title 5, United States Code.
- Sec. 105. Government Accountability Office study of rules.

##### TITLE II—PERMANENT INTERNET TAX FREEDOM

- Sec. 201. Short title.
- Sec. 202. Permanent moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce.

#### DIVISION V—NATURAL RESOURCES

##### SUBDIVISION A—RESTORING HEALTHY FORESTS FOR HEALTHY COMMUNITIES

- Sec. 100. Short title.

##### TITLE I—RESTORING THE COMMITMENT TO RURAL COUNTIES AND SCHOOLS

- Sec. 101. Purposes.
- Sec. 102. Definitions.
- Sec. 103. Establishment of Forest Reserve Revenue Areas and annual volume requirements.
- Sec. 104. Management of Forest Reserve Revenue Areas.
- Sec. 105. Distribution of forest reserve revenues.

Sec. 106. Annual report.

## TITLE II—HEALTHY FOREST MANAGEMENT AND CATASTROPHIC WILDFIRE PREVENTION

Sec. 201. Purposes.

Sec. 202. Definitions.

Sec. 203. Hazardous fuel reduction projects and forest health projects in at-risk forests.

Sec. 204. Environmental analysis.

Sec. 205. State designation of high-risk areas of National Forest System and public lands.

Sec. 206. Use of hazardous fuels reduction or forest health projects for high-risk areas.

Sec. 207. Moratorium on use of prescribed fire in Mark Twain National Forest, Missouri, pending report.

## TITLE III—OREGON AND CALIFORNIA RAILROAD GRANT LANDS TRUST, CONSERVATION, AND JOBS

Sec. 301. Short title.

Sec. 302. Definitions.

### Subtitle A—Trust, Conservation, and Jobs

#### CHAPTER 1—CREATION AND TERMS OF O&C TRUST

Sec. 311. Creation of O&C Trust and designation of O&C Trust lands.

Sec. 312. Legal effect of O&C Trust and judicial review.

Sec. 313. Board of Trustees.

Sec. 314. Management of O&C Trust lands.

Sec. 315. Distribution of revenues from O&C Trust lands.

Sec. 316. Land exchange authority.

Sec. 317. Payments to the United States Treasury.

#### CHAPTER 2—TRANSFER OF CERTAIN LANDS TO FOREST SERVICE

Sec. 321. Transfer of certain Oregon and California Railroad Grant lands to Forest Service.

Sec. 322. Management of transferred lands by Forest Service.

Sec. 323. Management efficiencies and expedited land exchanges.

Sec. 324. Review panel and old growth protection.

Sec. 325. Uniqueness of old growth protection on Oregon and California Railroad Grant lands.

#### CHAPTER 3—TRANSITION

Sec. 331. Transition period and operations.

Sec. 332. O&C Trust management capitalization.

Sec. 333. Existing Bureau of Land Management and Forest Service contracts.

Sec. 334. Protection of valid existing rights and access to non-Federal land.

Sec. 335. Repeal of superseded law relating to Oregon and California Railroad Grant lands.

### Subtitle B—Coos Bay Wagon Roads

Sec. 341. Transfer of management authority over certain Coos Bay Wagon Road Grant lands to Coos County, Oregon.

- Sec. 342. Transfer of certain Coos Bay Wagon Road Grant lands to Forest Service.
- Sec. 343. Land exchange authority.

Subtitle C—Oregon Treasures

CHAPTER 1—WILDERNESS AREAS

- Sec. 351. Designation of Devil’s Staircase Wilderness.
- Sec. 352. Expansion of Wild Rogue Wilderness Area.

CHAPTER 2—WILD AND SCENIC RIVER DESIGNATED AND RELATED PROTECTIONS

- Sec. 361. Wild and scenic river designations, Molalla River.
- Sec. 362. Wild and Scenic Rivers Act technical corrections related to Cheteo River.
- Sec. 363. Wild and scenic river designations, Wasson Creek and Franklin Creek.
- Sec. 364. Wild and scenic river designations, Rogue River area.
- Sec. 365. Additional protections for Rogue River tributaries.

CHAPTER 3—ADDITIONAL PROTECTIONS

- Sec. 371. Limitations on land acquisition.
- Sec. 372. Overflights.
- Sec. 373. Buffer zones.
- Sec. 374. Prevention of wildfires.
- Sec. 375. Limitation on designation of certain lands in Oregon.

CHAPTER 4—EFFECTIVE DATE

- Sec. 381. Effective date.

Subtitle D—Tribal Trust Lands

PART 1—COUNCIL CREEK LAND CONVEYANCE

- Sec. 391. Definitions.
- Sec. 392. Conveyance.
- Sec. 393. Map and legal description.
- Sec. 394. Administration.

PART 2—OREGON COASTAL LAND CONVEYANCE

- Sec. 395. Definitions.
- Sec. 396. Conveyance.
- Sec. 397. Map and legal description.
- Sec. 398. Administration.

TITLE IV—COMMUNITY FOREST MANAGEMENT DEMONSTRATION

- Sec. 401. Purpose and definitions.
- Sec. 402. Establishment of community forest demonstration areas.
- Sec. 403. Advisory committee.
- Sec. 404. Management of community forest demonstration areas.
- Sec. 405. Distribution of funds from community forest demonstration area.
- Sec. 406. Initial funding authority.
- Sec. 407. Payments to United States Treasury.

Sec. 408. Termination of community forest demonstration area.

TITLE V—REAUTHORIZATION AND AMENDMENT OF EXISTING  
AUTHORITIES AND OTHER MATTERS

Sec. 501. Extension of Secure Rural Schools and Community Self-Determination Act of 2000 pending full operation of Forest Reserve Revenue Areas.

Sec. 502. Restoring original calculation method for 25-percent payments.

Sec. 503. Forest Service and Bureau of Land Management good-neighbor cooperation with States to reduce wildfire risks.

Sec. 504. Treatment as supplemental funding.

Sec. 505. Definition of fire suppression to include certain related activities.

Sec. 506. Prohibition on certain actions regarding Forest Service roads and trails.

SUBDIVISION B—NATIONAL STRATEGIC AND CRITICAL MINERALS  
PRODUCTION

Sec. 100. Short title.

Sec. 100A. Findings.

Sec. 100B. Definitions.

TITLE I—DEVELOPMENT OF DOMESTIC SOURCES OF STRATEGIC  
AND CRITICAL MINERALS

Sec. 101. Improving development of strategic and critical minerals.

Sec. 102. Responsibilities of the lead agency.

Sec. 103. Conservation of the resource.

Sec. 104. Federal register process for mineral exploration and mining projects.

TITLE II—JUDICIAL REVIEW OF AGENCY ACTIONS RELATING TO  
EXPLORATION AND MINE PERMITS

Sec. 201. Definitions for title.

Sec. 202. Timely filings.

Sec. 203. Right to intervene.

Sec. 204. Expedition in hearing and determining the action.

Sec. 205. Limitation on prospective relief.

Sec. 206. Limitation on attorneys' fees.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Secretarial order not affected.

**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.

1     **DIVISION I—WAYS AND MEANS**  
 2             **TITLE I—SAVE AMERICAN**  
 3                     **WORKERS**

4     **SEC. 101. SHORT TITLE.**

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

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

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

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

17                    (2) by inserting after subparagraph (D) the fol-  
 18     lowing new subparagraph:

19                            “(E) **FULL-TIME EQUIVALENTS TREATED**  
 20                            **AS FULL-TIME EMPLOYEES.**—Solely for pur-  
 21                            poses of determining whether an employer is an  
 22                            applicable large employer under this paragraph,  
 23                            an employer shall, in addition to the number of  
 24                            full-time employees for any month otherwise de-  
 25                            termined, include for such month a number of



1 full-time employees determined by dividing the  
2 aggregate number of hours of service of employ-  
3 ees who are not full-time employees for the  
4 month by 174.”.

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

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

9 (2) by inserting before subparagraph (B) the  
10 following new subparagraph:

11 “(A) IN GENERAL.—The term ‘full-time  
12 employee’ means, with respect to any month, an  
13 employee who is employed on average at least  
14 40 hours of service per week.”.

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

## 18 **TITLE II—HIRE MORE HEROES**

### 19 **SEC. 201. SHORT TITLE.**

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

1 **SEC. 202. EMPLOYEES WITH HEALTH COVERAGE UNDER**  
2 **TRICARE OR THE VETERANS ADMINISTRA-**  
3 **TION MAY BE EXEMPTED FROM EMPLOYER**  
4 **MANDATE UNDER PATIENT PROTECTION AND**  
5 **AFFORDABLE CARE ACT.**

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

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

17 “(i) chapter 55 of title 10, United  
18 States Code, including coverage under the  
19 TRICARE program, or

20 “(ii) under a health care program  
21 under chapter 17 or 18 of title 38, United  
22 States Code, as determined by the Sec-  
23 retary of Veterans Affairs, in coordination  
24 with the Secretary of Health and Human  
25 Services and the Secretary.”.

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

4 **TITLE III—AMERICAN RE-**  
5 **SEARCH AND COMPETITIVE-**  
6 **NESS**

7 **SEC. 301. SHORT TITLE.**

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

10 **SEC. 302. RESEARCH CREDIT SIMPLIFIED AND MADE PER-**  
11 **MANENT.**

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

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

18 “(1) 20 percent of so much of the qualified re-  
19 search expenses for the taxable year as exceeds 50  
20 percent of the average qualified research expenses  
21 for the 3 taxable years preceding the taxable year  
22 for which the credit is being determined,

23 “(2) 20 percent of so much of the basic re-  
24 search payments for the taxable year as exceeds 50  
25 percent of the average basic research payments for

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

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

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

10 (c) CONFORMING AMENDMENTS.—

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

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

15 “(1) SPECIAL RULE IN CASE OF NO QUALIFIED  
16 RESEARCH EXPENDITURES IN ANY OF 3 PRECEDING  
17 TAXABLE YEARS.—In any case in which the taxpayer  
18 has no qualified research expenses in any one of the  
19 3 taxable years preceding the taxable year for which  
20 the credit is being determined, the amount deter-  
21 mined under subsection (a)(1) for such taxable year  
22 shall be equal to 10 percent of the qualified research  
23 expenses for the taxable year.

24 “(2) CONSISTENT TREATMENT OF EX-  
25 PENSES.—

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

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

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

24                   (A) by striking all that precedes paragraph  
25                   (6) and inserting the following:

1       “(e) BASIC RESEARCH PAYMENTS.—For purposes of  
2 this section—

3           “(1) IN GENERAL.—The term ‘basic research  
4 payment’ means, with respect to any taxable year,  
5 any amount paid in cash during such taxable year  
6 by a corporation to any qualified organization for  
7 basic research but only if—

8           “(A) such payment is pursuant to a writ-  
9 ten agreement between such corporation and  
10 such qualified organization, and

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

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

18           (B) by redesignating paragraphs (6) and  
19 (7) as paragraphs (3) and (4), respectively, and

20           (C) in paragraph (4) as so redesignated,  
21 by striking subparagraphs (B) and (C) and by  
22 redesignating subparagraphs (D) and (E) as  
23 subparagraphs (B) and (C), respectively.

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

1           (A)(i) by striking “, and the gross re-  
2 receipts” in subparagraph (A)(i) and all that fol-  
3 lows through “determined under clause (iii)”,

4           (ii) by striking clause (iii) of subparagraph  
5 (A) and redesignating clauses (iv), (v), and (vi),  
6 thereof, as clauses (iii), (iv), and (v), respec-  
7 tively,

8           (iii) by striking “and (iv)” each place it  
9 appears in subparagraph (A)(iv) (as so redesign-  
10 ated) and inserting “and (iii)”,

11           (iv) by striking subclause (IV) of subpara-  
12 graph (A)(iv) (as so redesignated), by striking  
13 “, and” at the end of subparagraph (A)(iv)(III)  
14 (as so redesignated) and inserting a period, and  
15 by adding “and” at the end of subparagraph  
16 (A)(iv)(II) (as so redesignated),

17           (v) by striking “(A)(vi)” in subparagraph  
18 (B) and inserting “(A)(v)”, and

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

21           (B) by striking “, and the gross receipts of  
22 the predecessor,” in subparagraph (A)(iv)(II)  
23 (as so redesignated),

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

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

3 (E) by striking subparagraph (C).

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

6 (d) EFFECTIVE DATE.—

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

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

14 **SEC. 303. PAYGO SCORECARD.**

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

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



1       **TITLE IV—AMERICA’S SMALL**  
2                   **BUSINESS TAX RELIEF**

3       **SEC. 401. SHORT TITLE.**

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

6       **SEC. 402. EXPENSING CERTAIN DEPRECIABLE BUSINESS**  
7                   **ASSETS FOR SMALL BUSINESS.**

8           (a) IN GENERAL.—

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

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

18           (b) COMPUTER SOFTWARE.—Clause (ii) of section  
19           179(d)(1)(A) of such Code is amended by striking “, to  
20           which section 167 applies, and which is placed in service  
21           in a taxable year beginning after 2002 and before 2014”  
22           and inserting “and to which section 167 applies”.

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

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

3           (2) by striking “IRREVOCABLE” in the heading  
4           thereof.

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

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

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

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

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

17           “(6) INFLATION ADJUSTMENT.—

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

22           “(i) such dollar amount, multiplied by

23           “(ii) the cost-of-living adjustment de-  
24 termined under section 1(f)(3) for the cal-  
25 endar year in which such taxable year be-

1 gins, determined by substituting ‘calendar  
2 year 2013’ for ‘calendar year 1992’ in sub-  
3 paragraph (B) thereof.

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

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

10 **SEC. 403. BUDGETARY EFFECTS.**

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

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

19 **TITLE V—S CORPORATION**  
20 **PERMANENT TAX RELIEF**

21 **SEC. 501. SHORT TITLE.**

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

1 **SEC. 502. REDUCED RECOGNITION PERIOD FOR BUILT-IN**  
2 **GAINS OF S CORPORATIONS MADE PERMA-**  
3 **NENT.**

4 (a) **IN GENERAL.**—Paragraph (7) of section 1374(d)  
5 of the Internal Revenue Code of 1986 is amended to read  
6 as follows:

7 “(7) **RECOGNITION PERIOD.**—

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

17 “(B) **INSTALLMENT SALES.**—If an S cor-  
18 poration sells an asset and reports the income  
19 from the sale using the installment method  
20 under section 453, the treatment of all pay-  
21 ments received shall be governed by the provi-  
22 sions of this paragraph applicable to the taxable  
23 year in which such sale was made.”.

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

1 **SEC. 503. PERMANENT RULE REGARDING BASIS ADJUST-**  
2 **MENT TO STOCK OF S CORPORATIONS MAK-**  
3 **ING CHARITABLE CONTRIBUTIONS OF PROP-**  
4 **ERTY.**

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

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

11 **SEC. 504. BUDGETARY EFFECTS.**

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

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

20 **TITLE VI—BONUS DEPRECIATION MODIFIED AND MADE**  
21 **PERMANENT**

23 **SEC. 601. BONUS DEPRECIATION MODIFIED AND MADE**  
24 **PERMANENT.**

25 (a) MADE PERMANENT; INCLUSION OF QUALIFIED  
26 RETAIL IMPROVEMENT PROPERTY.—Section 168(k)(2) of

1 the Internal Revenue Code of 1986 is amended to read  
2 as follows:

3 “(2) QUALIFIED PROPERTY.—For purposes of  
4 this subsection—

5 “(A) IN GENERAL.—The term ‘qualified  
6 property’ means property—

7 “(i)(I) to which this section applies  
8 which has a recovery period of 20 years or  
9 less,

10 “(II) which is computer software (as  
11 defined in section 167(f)(1)(B)) for which  
12 a deduction is allowable under section  
13 167(a) without regard to this subsection,

14 “(III) which is water utility property,

15 “(IV) which is qualified leasehold im-  
16 provement property, or

17 “(V) which is qualified retail improve-  
18 ment property, and

19 “(ii) the original use of which com-  
20 mences with the taxpayer.

21 “(B) EXCEPTION FOR ALTERNATIVE DE-  
22 PRECIATION PROPERTY.—The term ‘qualified  
23 property’ shall not include any property to  
24 which the alternative depreciation system under  
25 subsection (g) applies, determined—

1 “(i) without regard to paragraph (7)  
2 of subsection (g) (relating to election to  
3 have system apply), and

4 “(ii) after application of section  
5 280F(b) (relating to listed property with  
6 limited business use).

7 “(C) SPECIAL RULES.—

8 “(i) SALE-LEASEBACKS.—For pur-  
9 poses of clause (ii) and subparagraph  
10 (A)(ii), if property is—

11 “(I) originally placed in service  
12 by a person, and

13 “(II) sold and leased back by  
14 such person within 3 months after the  
15 date such property was originally  
16 placed in service,

17 such property shall be treated as originally  
18 placed in service not earlier than the date  
19 on which such property is used under the  
20 leaseback referred to in subclause (II).

21 “(ii) SYNDICATION.—For purposes of  
22 subparagraph (A)(ii), if—

23 “(I) property is originally placed  
24 in service by the lessor of such prop-  
25 erty,

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

14           “(III) the user of such property  
15          after the last sale during such 3-  
16          month period remains the same as  
17          when such property was originally  
18          placed in service,

19          such property shall be treated as originally  
20          placed in service not earlier than the date  
21          of such last sale.

22          “(D) COORDINATION WITH SECTION  
23          280F.—For purposes of section 280F—

24           “(i) AUTOMOBILES.—In the case of a  
25          passenger automobile (as defined in section



1 280F(d)(5)) which is qualified property,  
2 the Secretary shall increase the limitation  
3 under section 280F(a)(1)(A)(i) by \$8,000.

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

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

13 “(I) such dollar amount, multi-  
14 plied by

15 “(II) the automobile price infla-  
16 tion adjustment determined under sec-  
17 tion 280F(d)(7)(B)(i) for the calendar  
18 year in which such taxable year begins  
19 by substituting ‘2013’ for ‘1987’ in  
20 subclause (II) thereof.

21 If any increase under the preceding sen-  
22 tence is not a multiple of \$100, such in-  
23 crease shall be rounded to the nearest mul-  
24 tiple of \$100.

1           “(E) DEDUCTION ALLOWED IN COMPUTING  
2           MINIMUM TAX.—For purposes of determining  
3           alternative minimum taxable income under sec-  
4           tion 55, the deduction under section 167 for  
5           qualified property shall be determined without  
6           regard to any adjustment under section 56.”.

7           (b) EXPANSION OF ELECTION TO ACCELERATE AMT  
8           CREDITS IN LIEU OF BONUS DEPRECIATION.—Section  
9           168(k)(4) of such Code is amended to read as follows:

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

12           “(A) IN GENERAL.—If a corporation elects  
13           to have this paragraph apply for any taxable  
14           year—

15           “(i) paragraphs (1)(A), (2)(D)(i), and  
16           (5)(A)(i) shall not apply for such taxable  
17           year,

18           “(ii) the applicable depreciation meth-  
19           od used under this section with respect to  
20           any qualified property shall be the straight  
21           line method, and

22           “(iii) the limitation imposed by section  
23           53(c) for such taxable year shall be in-  
24           creased by the bonus depreciation amount

1           which is determined for such taxable year  
2           under subparagraph (B).

3           “(B) BONUS DEPRECIATION AMOUNT.—

4           For purposes of this paragraph—

5                   “(i) IN GENERAL.—The bonus depre-  
6                   ciation amount for any taxable year is an  
7                   amount equal to 20 percent of the excess  
8                   (if any) of—

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

15                                   “(II) the aggregate amount of  
16                                   depreciation which would be allowed  
17                                   under this section for qualified prop-  
18                                   erty placed in service by the taxpayer  
19                                   during such taxable year if paragraph  
20                                   (1) did not apply to any such prop-  
21                                   erty.

22           The aggregate amounts determined under  
23           subclauses (I) and (II) shall be determined  
24           without regard to any election made under  
25           subsection (b)(2)(D), (b)(3)(D), or (g)(7)

1 and without regard to subparagraph  
2 (A)(ii).

3 “(ii) LIMITATION.—The bonus depre-  
4 ciation amount for any taxable year shall  
5 not exceed the lesser of—

6 “(I) 50 percent of the minimum  
7 tax credit under section 53(b) for the  
8 first taxable year ending after Decem-  
9 ber 31, 2013, or

10 “(II) the minimum tax credit  
11 under section 53(b) for such taxable  
12 year determined by taking into ac-  
13 count only the adjusted net minimum  
14 tax for taxable years ending before  
15 January 1, 2014 (determined by  
16 treating credits as allowed on a first-  
17 in, first-out basis).

18 “(iii) AGGREGATION RULE.—All cor-  
19 porations which are treated as a single em-  
20 ployer under section 52(a) shall be treat-  
21 ed—

22 “(I) as 1 taxpayer for purposes  
23 of this paragraph, and

1                   “(II) as having elected the appli-  
2                   cation of this paragraph if any such  
3                   corporation so elects.

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

11                  “(D) OTHER RULES.—

12                   “(i) ELECTION.—Any election under  
13                   this paragraph may be revoked only with  
14                   the consent of the Secretary.

15                   “(ii) PARTNERSHIPS WITH ELECTING  
16                   PARTNERS.—In the case of a corporation  
17                   which is a partner in a partnership and  
18                   which makes an election under subpara-  
19                   graph (A) for the taxable year, for pur-  
20                   poses of determining such corporation’s  
21                   distributive share of partnership items  
22                   under section 702 for such taxable year—

23                   “(I) paragraphs (1)(A),  
24                   (2)(D)(i), and (5)(A)(i) shall not  
25                   apply, and

1                   “(II) the applicable depreciation  
2                   method used under this section with  
3                   respect to any qualified property shall  
4                   be the straight line method.

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

20                  (c) SPECIAL RULES FOR TREES AND VINES BEARING  
21 FRUITS AND NUTS.—Section 168(k) of such Code is  
22 amended—

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

24                   (2) by inserting after paragraph (4) the fol-  
25                  lowing new paragraph:

1           “(5) SPECIAL RULES FOR TREES AND VINES  
2 BEARING FRUITS AND NUTS.—

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

9           “(i) a depreciation deduction equal to  
10 50 percent of the adjusted basis of such  
11 tree or vine shall be allowed under section  
12 167(a) for the taxable year in which such  
13 tree or vine is so planted or grafted, and

14           “(ii) the adjusted basis of such tree or  
15 vine shall be reduced by the amount of  
16 such deduction.

17           “(B) ELECTION OUT.—If a taxpayer  
18 makes an election under this subparagraph for  
19 any taxable year, this paragraph shall not apply  
20 to any tree or vine planted or grafted during  
21 such taxable year. An election under this sub-  
22 paragraph may be revoked only with the con-  
23 sent of the Secretary.

24           “(C) ADDITIONAL DEPRECIATION MAY BE  
25 CLAIMED ONLY ONCE.—If this paragraph ap-

1           plies to any tree or vine, such tree or vine shall  
2           not be treated as qualified property in the tax-  
3           able year in which placed in service.

4           “(D) COORDINATION WITH ELECTION TO  
5           ACCELERATE AMT CREDITS.—If a corporation  
6           makes an election under paragraph (4) for any  
7           taxable year, the amount under paragraph  
8           (4)(B)(i)(I) for such taxable year shall be in-  
9           creased by the amount determined under sub-  
10          paragraph (A)(i) for such taxable year.

11          “(E) DEDUCTION ALLOWED IN COMPUTING  
12          MINIMUM TAX.—Rules similar to the rules of  
13          paragraph (2)(E) shall apply for purposes of  
14          this paragraph.”.

15          (d) CONFORMING AMENDMENTS.—

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

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

20                   “(6) ELECTION OUT.—If a taxpayer makes an  
21                   election under this paragraph with respect to any  
22                   class of property for any taxable year, this sub-  
23                   section shall not apply to all property in such class  
24                   placed in service (or, in the case of paragraph (5),  
25                   planted or grafted) during such taxable year. An



1 election under this paragraph may be revoked only  
2 with the consent of the Secretary.”.

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

6 (4) Section 263A(c) of such Code is amended  
7 by adding at the end the following new paragraph:

8 “(7) COORDINATION WITH SECTION  
9 168(k)(5).—This section shall not apply to any  
10 amount allowable as a deduction by reason of section  
11 168(k)(5) (relating to special rules for trees and  
12 vines bearing fruits and nuts).”.

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

17 (6) Section 168(k) of such Code is amended by  
18 striking “ACQUIRED AFTER DECEMBER 31, 2007,  
19 AND BEFORE JANUARY 1, 2014” in the heading  
20 thereof.

21 (e) EFFECTIVE DATES.—

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

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

3           (A) IN GENERAL.—The amendment made  
4           by subsection (b) (other than so much of such  
5           amendment as relates to section  
6           168(k)(4)(D)(iii) of such Code, as added by  
7           such amendment) shall apply to taxable years  
8           ending after December 31, 2013.

9           (B) TRANSITIONAL RULE.—In the case of  
10          a taxable year beginning before January 1,  
11          2014, and ending after December 31, 2013, the  
12          bonus depreciation amount determined under  
13          section 168(k)(4) of such Code for such year  
14          shall be the sum of—

15                 (i) such amount determined without  
16                 regard to the amendments made by this  
17                 section and—

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

21                         (II) by multiplying the limitation  
22                         under section 168(k)(4)(C)(ii) of such  
23                         Code (determined without regard to  
24                         the amendments made by this section)  
25                         by a fraction the numerator of which

1 is the number of days in the taxable  
2 year before January 1, 2014, and the  
3 denominator of which is the number  
4 of days in the taxable year, and

5 (ii) such amount determined after  
6 taking into account the amendments made  
7 by this section and—

8 (I) by taking into account only  
9 property placed in service after De-  
10 cember 31, 2013, and

11 (II) by multiplying the limitation  
12 under section 168(k)(4)(B)(ii) of such  
13 Code (as amended by this section) by  
14 a fraction the numerator of which is  
15 the number of days in the taxable  
16 year after December 31, 2013, and  
17 the denominator of which is the num-  
18 ber of days in the taxable year.

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

23 **SEC. 602. BUDGETARY EFFECTS.**

24 (a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The  
25 budgetary effects of this title shall not be entered on either

1 PAYGO scorecard maintained pursuant to section 4(d) of  
2 the Statutory Pay-As-You-Go Act of 2010.

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

## 7 **TITLE VII—REPEAL OF MEDICAL** 8 **DEVICE EXCISE TAX**

### 9 **SEC. 701. REPEAL OF MEDICAL DEVICE EXCISE TAX.**

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

12 (b) CONFORMING AMENDMENTS.—

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

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

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

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

### 22 **SEC. 702. BUDGETARY EFFECTS.**

23 (a) STATUTORY PAY-AS-YOU-GO SCORECARDS.—The  
24 budgetary effects of this title shall not be entered on either

1 PAYGO scorecard maintained pursuant to section 4(d) of  
2 the Statutory Pay-As-You-Go Act of 2010.

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

7 **DIVISION II—FINANCIAL**  
8 **SERVICES**  
9 **TITLE I—SMALL BUSINESS CAP-**  
10 **ITAL ACCESS AND JOB PRES-**  
11 **ERVATION**

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

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

15 **SEC. 102. REGISTRATION AND REPORTING EXEMPTIONS**  
16 **RELATING TO PRIVATE EQUITY FUNDS ADVI-**  
17 **SORS.**

18 Section 203 of the Investment Advisers Act of 1940  
19 (15 U.S.C. 80b–3) is amended by adding at the end the  
20 following:

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

23 “(1) IN GENERAL.—Except as provided in this  
24 subsection, no investment adviser shall be subject to  
25 the registration or reporting requirements of this

1 title with respect to the provision of investment ad-  
2 vice relating to a private equity fund or funds, pro-  
3 vided that each such fund has not borrowed and  
4 does not have outstanding a principal amount in ex-  
5 cess of twice its invested capital commitments.

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

10 “(A) to require investment advisers de-  
11 scribed in paragraph (1) to maintain such  
12 records and provide to the Commission such an-  
13 nual or other reports as the Commission may  
14 require taking into account fund size, govern-  
15 ance, investment strategy, risk, and other fac-  
16 tors, as the Commission determines necessary  
17 and appropriate in the public interest and for  
18 the protection of investors; and

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

1 **TITLE II—SMALL BUSINESS**  
2 **MERGERS, ACQUISITIONS,**  
3 **SALES, AND BROKERAGE SIM-**  
4 **PLIFICATION**

5 **SEC. 201. SHORT TITLE.**

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

9 **SEC. 202. REGISTRATION EXEMPTION FOR MERGER AND**  
10 **ACQUISITION BROKERS.**

11 Section 15(b) of the Securities Exchange Act of 1934  
12 (15 U.S.C. 78o(b)) is amended by adding at the end the  
13 following:

14 “(13) REGISTRATION EXEMPTION FOR MERGER  
15 AND ACQUISITION BROKERS.—

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

19 “(B) EXCLUDED ACTIVITIES.—An M&A  
20 broker is not exempt from registration under  
21 this paragraph if such broker does any of the  
22 following:

23 “(i) Directly or indirectly, in connec-  
24 tion with the transfer of ownership of an  
25 eligible privately held company, receives,

1 holds, transmits, or has custody of the  
2 funds or securities to be exchanged by the  
3 parties to the transaction.

4 “(ii) Engages on behalf of an issuer in  
5 a public offering of any class of securities  
6 that is registered, or is required to be reg-  
7 istered, with the Commission under section  
8 12 or with respect to which the issuer files,  
9 or is required to file, periodic information,  
10 documents, and reports under subsection  
11 (d).

12 “(C) RULE OF CONSTRUCTION.—Nothing  
13 in this paragraph shall be construed to limit  
14 any other authority of the Commission to ex-  
15 empt any person, or any class of persons, from  
16 any provision of this title, or from any provision  
17 of any rule or regulation thereunder.

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

19 “(i) CONTROL.—The term ‘control’  
20 means the power, directly or indirectly, to  
21 direct the management or policies of a  
22 company, whether through ownership of  
23 securities, by contract, or otherwise. There  
24 is a presumption of control for any person  
25 who—



1           “(I) is a director, general part-  
2           ner, member or manager of a limited  
3           liability company, or officer exercising  
4           executive responsibility (or has similar  
5           status or functions);

6           “(II) has the right to vote 20  
7           percent or more of a class of voting  
8           securities or the power to sell or direct  
9           the sale of 20 percent or more of a  
10          class of voting securities; or

11          “(III) in the case of a partner-  
12          ship or limited liability company, has  
13          the right to receive upon dissolution,  
14          or has contributed, 20 percent or  
15          more of the capital.

16          “(ii) ELIGIBLE PRIVATELY HELD  
17          COMPANY.—The term ‘eligible privately  
18          held company’ means a company that  
19          meets both of the following conditions:

20                 “(I) The company does not have  
21                 any class of securities registered, or  
22                 required to be registered, with the  
23                 Commission under section 12 or with  
24                 respect to which the company files, or  
25                 is required to file, periodic informa-

1                   tion, documents, and reports under  
2                   subsection (d).

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

12                   “(aa) The earnings of the  
13                   company before interest, taxes,  
14                   depreciation, and amortization  
15                   are less than \$25,000,000.

16                   “(bb) The gross revenues of  
17                   the company are less than  
18                   \$250,000,000.

19                   “(iii) M&A BROKER.—The term ‘M&A  
20                   broker’ means a broker, and any person  
21                   associated with a broker, engaged in the  
22                   business of effecting securities transactions  
23                   solely in connection with the transfer of  
24                   ownership of an eligible privately held com-  
25                   pany, regardless of whether the broker acts

1 on behalf of a seller or buyer, through the  
2 purchase, sale, exchange, issuance, repur-  
3 chase, or redemption of, or a business com-  
4 bination involving, securities or assets of  
5 the eligible privately held company, if the  
6 broker reasonably believes that—

7 “(I) upon consummation of the  
8 transaction, any person acquiring se-  
9 curities or assets of the eligible pri-  
10 vately held company, acting alone or  
11 in concert, will control and, directly or  
12 indirectly, will be active in the man-  
13 agement of the eligible privately held  
14 company or the business conducted  
15 with the assets of the eligible privately  
16 held company; and

17 “(II) if any person is offered se-  
18 curities in exchange for securities or  
19 assets of the eligible privately held  
20 company, such person will, prior to  
21 becoming legally bound to consum-  
22 mate the transaction, receive or have  
23 reasonable access to the most recent  
24 year-end balance sheet, income state-  
25 ment, statement of changes in finan-

1           cial position, and statement of owner’s  
2           equity of the issuer of the securities  
3           offered in exchange, and, if the finan-  
4           cial statements of the issuer are au-  
5           dited, the related report of the inde-  
6           pendent auditor, a balance sheet  
7           dated not more than 120 days before  
8           the date of the offer, and information  
9           pertaining to the management, busi-  
10          ness, results of operations for the pe-  
11          riod covered by the foregoing financial  
12          statements, and material loss contin-  
13          gencies of the issuer.

14           “(E) INFLATION ADJUSTMENT.—

15                   “(i) IN GENERAL.—On the date that  
16                   is 5 years after the date of the enactment  
17                   of the Small Business Mergers, Acquisi-  
18                   tions, Sales, and Brokerage Simplification  
19                   Act of 2014, and every 5 years thereafter,  
20                   each dollar amount in subparagraph  
21                   (D)(ii)(II) shall be adjusted by—

22                           “(I) dividing the annual value of  
23                           the Employment Cost Index For  
24                           Wages and Salaries, Private Industry  
25                           Workers (or any successor index), as

1 published by the Bureau of Labor  
 2 Statistics, for the calendar year pre-  
 3 ceding the calendar year in which the  
 4 adjustment is being made by the an-  
 5 nual value of such index (or suc-  
 6 cessor) for the calendar year ending  
 7 December 31, 2012; and

8 “(II) multiplying such dollar  
 9 amount by the quotient obtained  
 10 under subclause (I).

11 “(ii) ROUNDING.—Each dollar  
 12 amount determined under clause (i) shall  
 13 be rounded to the nearest multiple of  
 14 \$100,000.”.

15 **SEC. 203. EFFECTIVE DATE.**

16 This title and any amendment made by this title shall  
 17 take effect on the date that is 90 days after the date of  
 18 the enactment of this Act.

19 **DIVISION III—OVERSIGHT**  
 20 **SUBDIVISION A—UNFUNDED**  
 21 **MANDATES INFORMATION**  
 22 **AND TRANSPARENCY**

23 **SEC. 101. SHORT TITLE.**

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

1 **SEC. 102. PURPOSE.**

2 The purpose of this title is—

3 (1) to improve the quality of the deliberations  
4 of Congress with respect to proposed Federal man-  
5 dates by—

6 (A) providing Congress and the public with  
7 more complete information about the effects of  
8 such mandates; and

9 (B) ensuring that Congress acts on such  
10 mandates only after focused deliberation on  
11 their effects; and

12 (2) to enhance the ability of Congress and the  
13 public to identify Federal mandates that may impose  
14 undue harm on consumers, workers, employers,  
15 small businesses, and State, local, and tribal govern-  
16 ments.

17 **SEC. 103. PROVIDING FOR CONGRESSIONAL BUDGET OF-**  
18 **FICE STUDIES ON POLICIES INVOLVING**  
19 **CHANGES IN CONDITIONS OF GRANT AID.**

20 Section 202(g) of the Congressional Budget Act of  
21 1974 (2 U.S.C. 602(g)) is amended by adding at the end  
22 the following new paragraph:

23 “(3) **ADDITIONAL STUDIES.**—At the request of  
24 any Chairman or ranking member of the minority of  
25 a Committee of the Senate or the House of Rep-  
26 resentatives, the Director shall conduct an assess-

1       ment comparing the authorized level of funding in a  
2       bill or resolution to the prospective costs of carrying  
3       out any changes to a condition of Federal assistance  
4       being imposed on State, local, or tribal governments  
5       participating in the Federal assistance program con-  
6       cerned or, in the case of a bill or joint resolution  
7       that authorizes such sums as are necessary, an as-  
8       sessment of an estimated level of funding compared  
9       to such costs.”.

10 **SEC. 104. CLARIFYING THE DEFINITION OF DIRECT COSTS**  
11                   **TO REFLECT CONGRESSIONAL BUDGET OF-**  
12                   **FIGE PRACTICE.**

13       Section 421(3) of the Congressional Budget Act of  
14 1974 (2 U.S.C. 658(3)(A)(i)) is amended—

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

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

1 **SEC. 105. EXPANDING THE SCOPE OF REPORTING RE-**  
2 **QUIREMENTS TO INCLUDE REGULATIONS IM-**  
3 **POSED BY INDEPENDENT REGULATORY**  
4 **AGENCIES.**

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

11 **SEC. 106. AMENDMENTS TO REPLACE OFFICE OF MANAGE-**  
12 **MENT AND BUDGET WITH OFFICE OF INFOR-**  
13 **MATION AND REGULATORY AFFAIRS.**

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

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

17 (A) in the subsection heading, by striking  
18 “OFFICE OF MANAGEMENT AND BUDGET” and  
19 inserting “OFFICE OF INFORMATION AND REG-  
20 ULATORY AFFAIRS”; and

21 (B) by striking “Director of the Office of  
22 Management and Budget” and inserting “Ad-  
23 ministrator of the Office of Information and  
24 Regulatory Affairs”;

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



1 (A) in the subsection heading, by striking  
2 “OMB”; and

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

7 (3) in section 206 (2 U.S.C. 1536), by striking  
8 “Director of the Office of Management and Budget”  
9 and inserting “Administrator of the Office of Infor-  
10 mation and Regulatory Affairs”.

11 **SEC. 107. APPLYING SUBSTANTIVE POINT OF ORDER TO**  
12 **PRIVATE SECTOR MANDATES.**

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

15 (1) by striking “Federal intergovernmental  
16 mandates” and inserting “Federal mandates”; and

17 (2) by inserting “or 424(b)(1)” after “section  
18 424(a)(1)”.

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

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

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

23 “(a) IN GENERAL.—Each agency shall, unless other-  
24 wise expressly prohibited by law, assess the effects of Fed-  
25 eral regulatory actions on State, local, and tribal govern-

1 ments and the private sector (other than to the extent that  
2 such regulatory actions incorporate requirements specifi-  
3 cally set forth in law) in accordance with the following  
4 principles:

5           “(1) Each agency shall identify the problem  
6 that it intends to address (including, if applicable,  
7 the failures of private markets or public institutions  
8 that warrant new agency action) as well as assess  
9 the significance of that problem.

10           “(2) Each agency shall examine whether exist-  
11 ing regulations (or other law) have created, or con-  
12 tributed to, the problem that a new regulation is in-  
13 tended to correct and whether those regulations (or  
14 other law) should be modified to achieve the in-  
15 tended goal of regulation more effectively.

16           “(3) Each agency shall identify and assess  
17 available alternatives to direct regulation, including  
18 providing economic incentives to encourage the de-  
19 sired behavior, such as user fees or marketable per-  
20 mits, or providing information upon which choices  
21 can be made by the public.

22           “(4) If an agency determines that a regulation  
23 is the best available method of achieving the regu-  
24 latory objective, it shall design its regulations in the  
25 most cost-effective manner to achieve the regulatory

1 objective. In doing so, each agency shall consider in-  
2 centives for innovation, consistency, predictability,  
3 the costs of enforcement and compliance (to the gov-  
4 ernment, regulated entities, and the public), flexi-  
5 bility, distributive impacts, and equity.

6 “(5) Each agency shall assess both the costs  
7 and the benefits of the intended regulation and, rec-  
8 ognizing that some costs and benefits are difficult to  
9 quantify, propose or adopt a regulation, unless ex-  
10 pressly prohibited by law, only upon a reasoned de-  
11 termination that the benefits of the intended regula-  
12 tion justify its costs.

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

17 “(7) Each agency shall identify and assess al-  
18 ternative forms of regulation and shall, to the extent  
19 feasible, specify performance objectives, rather than  
20 specifying the behavior or manner of compliance  
21 that regulated entities must adopt.

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

1           “(9) Each agency shall tailor its regulations to  
2           minimize the costs of the cumulative impact of regu-  
3           lations.

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

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

15       **SEC. 109. EXPANDING THE SCOPE OF STATEMENTS TO AC-**  
16                               **COMPANY SIGNIFICANT REGULATORY AC-**  
17                               **TIONS.**

18          (a) IN GENERAL.—Subsection (a) of section 202 of  
19          the Unfunded Mandates Reform Act of 1995 (2 U.S.C.  
20          1532) is amended to read as follows:

21          “(a) IN GENERAL.—Unless otherwise expressly pro-  
22          hibited by law, before promulgating any general notice of  
23          proposed rulemaking or any final rule, or within six  
24          months after promulgating any final rule that was not pre-  
25          ceded by a general notice of proposed rulemaking, if the

1 proposed rulemaking or final rule includes a Federal man-  
2 date that may result in an annual effect on State, local,  
3 or tribal governments, or to the private sector, in the ag-  
4 gregate of \$100,000,000 or more in any 1 year, the agency  
5 shall prepare a written statement containing the following:

6           “(1) The text of the draft proposed rulemaking  
7           or final rule, together with a reasonably detailed de-  
8           scription of the need for the proposed rulemaking or  
9           final rule and an explanation of how the proposed  
10          rulemaking or final rule will meet that need.

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

18          “(3) A qualitative and quantitative assessment,  
19          including the underlying analysis, of benefits antici-  
20          pated from the proposed rulemaking or final rule  
21          (such as the promotion of the efficient functioning of  
22          the economy and private markets, the enhancement  
23          of health and safety, the protection of the natural  
24          environment, and the elimination or reduction of dis-  
25          crimination or bias).

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

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

14                   “(A) the future compliance costs of the  
15 Federal mandate; and

16                   “(B) any disproportionate budgetary ef-  
17 fects of the Federal mandate upon any par-  
18 ticular regions of the Nation or particular  
19 State, local, or tribal governments, urban or  
20 rural or other types of communities, or par-  
21 ticular segments of the private sector.

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

1           “(B) A detailed summary of the comments and  
2           concerns that were presented by the private sector  
3           and State, local, or tribal governments either orally  
4           or in writing to the agency.

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

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

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

13          **SEC. 110. ENHANCED STAKEHOLDER CONSULTATION.**

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

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

18                  (2) in subsection (a)—

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

22                          (B) by striking “Federal intergovernmental  
23                          mandates” and inserting “Federal mandates”;  
24                          and

1           (3) by amending subsection (c) to read as fol-  
2           lows:

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

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

10           “(2) Agencies shall consult with a wide variety  
11 of State, local, and tribal officials and impacted par-  
12 ties within the private sector (including small busi-  
13 nesses). Geographic, political, and other factors that  
14 may differentiate varying points of view should be  
15 considered.

16           “(3) Agencies should estimate benefits and  
17 costs to assist with these consultations. The scope of  
18 the consultation should reflect the cost and signifi-  
19 cance of the Federal mandate being considered.

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

21           “(A) seek out the views of State, local, and  
22 tribal governments, and impacted parties within  
23 the private sector (including small business), on  
24 costs, benefits, and risks; and



1           “(B) solicit ideas about alternative meth-  
2           ods of compliance and potential flexibilities, and  
3           input on whether the Federal regulation will  
4           harmonize with and not duplicate similar laws  
5           in other levels of government.

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

8           “(6) Agencies may accept electronic submis-  
9           sions of comments by relevant parties but may not  
10          use those comments as the sole method of satisfying  
11          the guidelines in this subsection.”.

12 **SEC. 111. NEW AUTHORITIES AND RESPONSIBILITIES FOR**  
13                   **OFFICE OF INFORMATION AND REGULATORY**  
14                   **AFFAIRS.**

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

17 **“SEC. 208. OFFICE OF INFORMATION AND REGULATORY AF-**  
18                   **FAIRS RESPONSIBILITIES.**

19          “(a) IN GENERAL.—The Administrator of the Office  
20 of Information and Regulatory Affairs shall provide mean-  
21 ingful guidance and oversight so that each agency’s regu-  
22 lations for which a written statement is required under  
23 section 202 are consistent with the principles and require-  
24 ments of this title, as well as other applicable laws, and  
25 do not conflict with the policies or actions of another agen-

1 cy. If the Administrator determines that an agency’s regu-  
2 lations for which a written statement is required under  
3 section 202 do not comply with such principles and re-  
4 quirements, are not consistent with other applicable laws,  
5 or conflict with the policies or actions of another agency,  
6 the Administrator shall identify areas of non-compliance,  
7 notify the agency, and request that the agency comply be-  
8 fore the agency finalizes the regulation concerned.

9       “(b) ANNUAL STATEMENTS TO CONGRESS ON AGEN-  
10 CY COMPLIANCE.—The Director of the Office of Informa-  
11 tion and Regulatory Affairs annually shall submit to Con-  
12 gress, including the Committee on Homeland Security and  
13 Governmental Affairs of the Senate and the Committee  
14 on Oversight and Government Reform of the House of  
15 Representatives, a written report detailing compliance by  
16 each agency with the requirements of this title that relate  
17 to regulations for which a written statement is required  
18 by section 202, including activities undertaken at the re-  
19 quest of the Director to improve compliance, during the  
20 preceding reporting period. The report shall also contain  
21 an appendix detailing compliance by each agency with sec-  
22 tion 204.”.

1 **SEC. 112. RETROSPECTIVE ANALYSIS OF EXISTING FED-**  
2 **ERAL REGULATIONS.**

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

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

6 and

7 (2) by inserting after section 208 the following  
8 new section 209:

9 **“SEC. 209. RETROSPECTIVE ANALYSIS OF EXISTING FED-**  
10 **ERAL REGULATIONS.**

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

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

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

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

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

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

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

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

15          “(7) any litigation history challenging the Fed-  
16          eral regulation.”.

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

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

20                 (1) in paragraphs (1) and (2)(A)—

21                         (A) by striking “sections 202 and  
22                         203(a)(1) and (2)” each place it appears and  
23                         inserting “sections 201, 202, 203(a)(1) and (2),  
24                         and 205(a) and (b)”; and

1 (B) by striking “only” each place it ap-  
2 pears;

3 (2) in paragraph (2)(B), by striking “section  
4 202” and all that follows through the period at the  
5 end and inserting the following: “section 202, pre-  
6 pare the written plan under section 203(a)(1) and  
7 (2), or comply with section 205(a) and (b), a court  
8 may compel the agency to prepare such written  
9 statement, prepare such written plan, or comply with  
10 such section.”; and

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

1                   **CHAPTER 3—TRANSITION**

2   **SEC. 331. TRANSITION PERIOD AND OPERATIONS.**

3           (a) **TRANSITION PERIOD.**—

4                   (1) **COMMENCEMENT; DURATION.**—Effective on  
5           October 1 of the first fiscal year beginning after the  
6           appointment of the Board of Trustees under section  
7           313, a transition period of three fiscal years shall  
8           commence.

9                   (2) **EXCEPTIONS.**—Unless specifically stated in  
10           the following subsections, any action under this sec-  
11           tion shall be deemed not to involve Federal agency  
12           action or Federal discretionary involvement or con-  
13           trol.

14           (b) **YEAR ONE.**—

15                   (1) **APPLICABILITY.**—During the first fiscal  
16           year of the transition period, the activities described  
17           in this subsection shall occur.

18                   (2) **BOARD OF TRUSTEES ACTIVITIES.**—The  
19           Board of Trustees shall employ sufficient staff or  
20           contractors to prepare for beginning management of  
21           O&C Trust lands and O&C Region Public Domain  
22           lands in the second fiscal year of the transition pe-  
23           riod, including preparation of management plans  
24           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 NE<sup>1</sup>/<sub>4</sub> 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 igned 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:

KAREN L. HAAS,

*Clerk.*



Calendar No. 597

113<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**H. R. 4**

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**AN ACT**

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

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NOVEMBER 13, 2014

Read the second time and placed on the calendar