

**Calendar No. 214**112TH CONGRESS  
1ST SESSION**S. 1786**

To facilitate job creation by reducing regulatory uncertainty, providing for rational evaluation of regulations, providing flexibilities to States and localities, providing for infrastructure spending, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

NOVEMBER 2, 2011

Mr. HATCH introduced the following bill; which was read twice and ordered placed on the calendar

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**A BILL**

To facilitate job creation by reducing regulatory uncertainty, providing for rational evaluation of regulations, providing flexibilities to States and localities, providing for infrastructure spending, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Long-Term Surface Transportation Extension Act of  
6 2011”.

1 (b) TABLE OF CONTENTS.—The table of contents of  
 2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL-AID HIGHWAYS

Subtitle A—Funding

Sec. 101. Reconciliation of funds.

Subtitle B—Extension of Federal-aid Highway Programs

Sec. 111. Extension of Federal-aid highway programs.

Subtitle C—Highway Trust Fund Extension

Sec. 121. Extension of trust fund expenditure authority.

Sec. 122. Extension of highway-related taxes.

Subtitle D—Accelerating Project Delivery

Sec. 131. Project delivery acceleration initiative.

Sec. 132. Efficiencies in contracting.

Sec. 133. Application of categorical exclusions for multimodal projects.

Sec. 134. Integration of planning and environmental review.

Sec. 135. National Environmental Policy Act process reforms.

Sec. 136. Clarified eligibility for early acquisition activities prior to completion  
of environmental review process.

Sec. 137. Surface transportation project delivery program.

Sec. 138. State assumption of responsibilities for categorical exclusions.

Sec. 139. Emergency waiver.

Sec. 140. Cement sector regulatory relief.

TITLE II—PUBLIC TRANSPORTATION

Sec. 201. Public transportation.

TITLE III—EXTENSION OF SURFACE TRANSPORTATION  
PROGRAMS

Sec. 301. Extension of National Highway Traffic Safety Administration high-  
way safety programs.

Sec. 302. Extension of Federal Motor Carrier Safety Administration programs.

Sec. 303. Additional programs.

TITLE IV—REGULATIONS FROM THE EXECUTIVE IN NEED OF  
SCRUTINY

Sec. 401. Short title.

Sec. 402. Findings and purpose.

Sec. 403. Congressional review of agency rulemaking.

TITLE V—EPA REGULATORY RELIEF

Sec. 501. Short title.

Sec. 502. Legislative stay.

Sec. 503. Compliance dates.

Sec. 504. Energy recovery and conservation.  
 Sec. 505. Other provisions.

#### TITLE VI—REGULATORY TIME-OUT

Sec. 601. Short title.  
 Sec. 602. Definitions.  
 Sec. 603. Time-out period for regulations.  
 Sec. 604. Exemptions.

#### TITLE VII—RESCISSION OF UNSPENT FEDERAL FUNDS TO OFFSET LOSS IN REVENUES

Sec. 701. Rescission.

1           **TITLE I—FEDERAL-AID**  
 2                           **HIGHWAYS**  
 3                           **Subtitle A—Funding**

4 **SEC. 101. RECONCILIATION OF FUNDS.**

5           The Secretary of Transportation shall reduce the  
 6 amount apportioned or allocated for each program,  
 7 project, and activity under this Act or an amendment  
 8 made by this Act for fiscal year 2012 by amounts appor-  
 9 tioned or allocated pursuant to the Surface Transpor-  
 10 tation Extension Act of 2011, Part II (Public Law 112–  
 11 30; 125 Stat. 343), for the period beginning on October  
 12 1, 2011, and ending on March 4, 2012.

13           **Subtitle B—Extension of Federal-**  
 14                           **aid Highway Programs**

15 **SEC. 111. EXTENSION OF FEDERAL-AID HIGHWAY PRO-**  
 16                           **GRAMS.**

17           (a) IN GENERAL.—Section 111 of the Surface Trans-  
 18 portation Extension Act of 2011, Part II (125 Stat. 343)  
 19 is amended—

1           (1) by striking “for the period beginning on Oc-  
2           tober 1, 2011, and ending on March 31, 2012,” each  
3           place it appears and inserting “for each of fiscal  
4           years 2012 and 2013”; and

5           (2) by striking “1/2 of” each place it appears.

6           (b) AUTHORIZATION DATE.—Section 111(a) of the  
7           Surface Transportation Extension Act of 2011, Part II  
8           (125 Stat. 343) is amended by striking “March 31, 2012”  
9           and inserting “September 30, 2013”.

10          (c) USE OF FUNDS.—

11           (1) IN GENERAL.—Section 111(c) of the Sur-  
12           face Transportation Extension Act of 2011, Part II  
13           (125 Stat. 343) is amended—

14           (A) in the heading of paragraph (1), by  
15           striking “FISCAL YEAR 2012” and inserting “IN  
16           GENERAL”;

17           (B) in paragraph (2), by striking “The  
18           amounts” and inserting “For each of fiscal  
19           years 2012 and 2013, the amounts”;

20           (C) in paragraph (3)—

21           (i) in subparagraph (A), by striking  
22           “included in an Act making appropriations  
23           for fiscal year 2012 or” and all that fol-  
24           lows through the period at the end and in-  
25           serting “included in an Act making appro-

1           priations for the fiscal year, or a portion of  
2           the fiscal year, for which the funds are au-  
3           thorized to be appropriated”; and

4                   (ii) in subparagraph (B)(ii), by strik-  
5           ing “only in an amount equal to  
6           \$319,500,000” and inserting “only in an  
7           amount equal to \$639,000,000”; and

8                   (D) by striking paragraph (4) and insert-  
9           ing the following:

10           “(4)   TRANSPORTATION    ENHANCEMENTS.—  
11           Funds shall be distributed, administered, limited,  
12           and made available for obligation under paragraph  
13           (1) without regard to section 133(d)(2) of title 23,  
14           United States Code (as in effect on the day before  
15           the date of enactment of the Long-Term Surface  
16           Transportation Extension Act of 2011.”.

17                   (2) REPEAL.—Section 133(d)(2) of title 23,  
18           United States Code, is repealed.

19                   (d) EXTENSION AND FLEXIBILITY FOR CERTAIN AL-  
20           LOCATED PROGRAMS.—Section 111(d)(3)(B) of the Sur-  
21           face Transportation Extension Act of 2011, Part II (125  
22           Stat. 345) is amended by striking “Funds made available  
23           in accordance” and inserting “For each of fiscal years  
24           2012 and 2013, funds made available in accordance”.

1 (e) EXTENSION OF AUTHORIZATIONS UNDER TITLE  
2 V OF SAFETEA-LU.—Section 111(e)(3)(B) of the Sur-  
3 face Transportation Extension Act of 2011, Part II (125  
4 Stat. 345) is amended by striking “Funds” and inserting  
5 “For each of fiscal years 2012 and 2013, funds”.

6 (f) ADMINISTRATIVE EXPENSES.—Section 112 of the  
7 Surface Transportation Extension Act of 2011, Part II  
8 (125 Stat. 346) is amended by striking “\$196,427,625 for  
9 the period beginning on October 1, 2011, and ending on  
10 March 31, 2012” and inserting “\$425,000,000 for each  
11 of fiscal years 2012 and 2013”.

## 12 **Subtitle C—Highway Trust Fund** 13 **Extension**

### 14 **SEC. 121. EXTENSION OF TRUST FUND EXPENDITURE AU-** 15 **THORITY.**

16 (a) HIGHWAY TRUST FUND.—Section 9503 of the  
17 Internal Revenue Code of 1986 is amended—

18 (1) by striking “April 1, 2012” in subsections  
19 (b)(6)(B), (c)(1), and (e)(3) and inserting “October  
20 1, 2013”; and

21 (2) by striking “Surface Transportation Exten-  
22 sion Act of 2011, Part II” in subsections (c)(1) and  
23 (e)(3) and inserting “Long-Term Surface Transpor-  
24 tation Extension Act of 2011”.

1 (b) SPORT FISH RESTORATION AND BOATING TRUST  
2 FUND.—Section 9504 of the Internal Revenue Code of  
3 1986 is amended—

4 (1) by striking “Surface Transportation Exten-  
5 sion Act of 2011, Part II” each place it appears in  
6 subsection (b)(2) and inserting “Long-Term Surface  
7 Transportation Extension Act of 2011”; and

8 (2) by striking “April 1, 2012” in subsection  
9 (d)(2) and inserting “October 1, 2013”.

10 (c) LEAKING UNDERGROUND STORAGE TANK TRUST  
11 FUND.—Paragraph (2) of section 9508(e) of the Internal  
12 Revenue Code of 1986 is amended by striking “April 1,  
13 2012” and inserting “October 1, 2013”.

14 (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall take effect on April 1, 2012.

16 **SEC. 122. EXTENSION OF HIGHWAY-RELATED TAXES.**

17 (a) IN GENERAL.—

18 (1) Each of the following provisions of the In-  
19 ternal Revenue Code of 1986 is amended by striking  
20 “March 31, 2012” and inserting “September 30,  
21 2013”:

22 (A) Section 4041(a)(1)(C)(iii)(I).

23 (B) Section 4041(m)(1)(B).

24 (C) Section 4081(d)(1).

1           (2) Each of the following provisions of such  
2 Code is amended by striking “April 1, 2012” and in-  
3 sserting “October 1, 2013”:

4                   (A) Section 4041(m)(1)(A).

5                   (B) Section 4051(e).

6                   (C) Section 4071(d).

7                   (D) Section 4081(d)(3).

8           (b) EXTENSION OF TAX, ETC., ON USE OF CERTAIN  
9 HEAVY VEHICLES.—Each of the following provisions of  
10 the Internal Revenue Code of 1986 is amended by striking  
11 “2012” and inserting “2014”:

12                   (1) Section 4481(f).

13                   (2) Subsections (c)(4) and (d) of section 4482.

14           (c) FLOOR STOCKS REFUNDS.—Section 6412(a)(1)  
15 of the Internal Revenue Code of 1986 is amended—

16                   (1) by striking “April 1, 2012” each place it  
17 appears and inserting “October 1, 2013”;

18                   (2) by striking “September 30, 2012” each  
19 place it appears and inserting “March 31, 2014”;  
20 and

21                   (3) by striking “July 1, 2012” and inserting  
22 “January 1, 2014”.

23           (d) EXTENSION OF CERTAIN EXEMPTIONS.—Sec-  
24 tions 4221(a) and 4483(i) of the Internal Revenue Code



1 of 1986 are each amended by striking “April 1, 2012”  
2 and inserting “October 1, 2013”.

3 (e) EXTENSION OF TRANSFERS OF CERTAIN  
4 TAXES.—

5 (1) IN GENERAL.—Section 9503 of the Internal  
6 Revenue Code of 1986 is amended—

7 (A) in subsection (b)—

8 (i) by striking “April 1, 2012” each  
9 place it appears in paragraphs (1) and (2)  
10 and inserting “October 1, 2013”;

11 (ii) by striking “APRIL 1, 2012” in the  
12 heading of paragraph (2) and inserting  
13 “OCTOBER 1, 2013”;

14 (iii) by striking “March 31, 2012” in  
15 paragraph (2) and inserting “September  
16 30, 2013”; and

17 (iv) by striking “January 1, 2013” in  
18 paragraph (2) and inserting “July 1,  
19 2014”; and

20 (B) in subsection (c)(2), by striking “Jan-  
21 uary 1, 2013” and inserting “July 1, 2014”.

22 (2) MOTORBOAT AND SMALL-ENGINE FUEL TAX  
23 TRANSFERS.—

24 (A) IN GENERAL.—Paragraphs (3)(A)(i)  
25 and (4)(A) of section 9503(c) of such Code are

1 each amended by striking “April 1, 2012” and  
2 inserting “October 1, 2013”.

3 (B) CONFORMING AMENDMENTS TO LAND  
4 AND WATER CONSERVATION FUND.—Section  
5 201(b) of the Land and Water Conservation  
6 Fund Act of 1965 (16 U.S.C. 460l–11(b)) is  
7 amended—

8 (i) by striking “April 1, 2013” each  
9 place it appears and inserting “October 1,  
10 2014”; and

11 (ii) by striking “April 1, 2012” and  
12 inserting “October 1, 2013”.

13 (f) EFFECTIVE DATE.—The amendments made by  
14 this section shall take effect on April 1, 2012.

## 15 **Subtitle D—Accelerating Project** 16 **Delivery**

### 17 **SEC. 131. PROJECT DELIVERY ACCELERATION INITIATIVE.**

18 (a) DECLARATION OF POLICY.—Congress finds  
19 that—

20 (1) it is in the national interest to enable the  
21 Secretary of Transportation (referred to in this sub-  
22 title as “the Secretary”), State departments of  
23 transportation, transit agencies, and all other recipi-  
24 ents of Federal transportation funds—

1 (A) to accelerate project delivery accelera-  
2 tion and reduce costs; and

3 (B) to ensure that the planning, design,  
4 engineering, construction, and financing of  
5 transportation projects is done in an efficient  
6 and effective manner that—

7 (i) promotes accountability for public  
8 investments; and

9 (ii) encourages greater private sector  
10 involvement in project financing and deliv-  
11 ery;

12 (2) delay in the delivery of transportation  
13 projects—

14 (A) increases project costs;

15 (B) harms the economy of the United  
16 States; and

17 (C) impedes the travel of the people of the  
18 United States; and

19 (3) the Secretary shall identify and promote the  
20 deployment of innovation aimed at reducing the time  
21 and money it takes to deliver transportation projects  
22 while enhancing safety and protecting the environ-  
23 ment.

24 (b) ESTABLISHMENT OF INITIATIVE.—

1           (1) IN GENERAL.—To advance the policy identi-  
2           fied in subsection (a), the Secretary shall carry out  
3           a project delivery acceleration initiative in accord-  
4           ance with this section.

5           (2) PURPOSES.—The purposes of the project  
6           delivery acceleration initiative shall be—

7                   (A) to develop and advance the use of best  
8                   practices to accelerate project delivery and re-  
9                   duce costs across all modes of transportation  
10                  and expedite the deployment of technology and  
11                  innovation;

12                  (B) to implement statutory provisions de-  
13                  signed to accelerate project delivery; and

14                  (C) to select eligible projects for applying  
15                  experimental features to test innovative project  
16                  delivery acceleration techniques.

17           (3) ADVANCING THE USE OF BEST PRAC-  
18           TICES.—

19                   (A) IN GENERAL.—In carrying out the ini-  
20                   tiative under this section, the Secretary shall  
21                   identify and advance best practices to reduce  
22                   delivery time and project costs, from planning  
23                   to construction, for transportation projects and  
24                   programs of projects regardless of mode and  
25                   project size.

1 (B) REQUIREMENT.—To advance the use  
2 of best practices, the Secretary shall—

3 (i) engage transportation stakeholders  
4 to gather information regarding opportuni-  
5 ties for accelerating project delivery and  
6 reducing costs;

7 (ii) establish a clearinghouse for the  
8 collection, documentation, and advance-  
9 ment of existing and new innovative ap-  
10 proaches and best practices;

11 (iii) disseminate information through  
12 a variety of means to transportation stake-  
13 holders on new innovative approaches and  
14 best practices; and

15 (iv) provide technical assistance to as-  
16 sist transportation stakeholders in the use  
17 of existing flexibilities to resolve project  
18 delays and accelerate project delivery, to  
19 the maximum extent practicable.

20 (4) IMPLEMENTING STATUTORY PROVISIONS  
21 FOR ACCELERATING PROJECT DELIVERY.—The Sec-  
22 retary shall ensure that the provisions of this sub-  
23 title and the amendments made by this subtitle in-  
24 tended to accelerate project delivery are fully imple-  
25 mented, including by—

1 (A) compressing the process for drafting  
2 environmental impact statements under the Na-  
3 tional Environmental Policy Act of 1969 (42  
4 U.S.C. 4321 et seq.);

5 (B) establishing mandatory timeframes for  
6 permitting and approval decisions of other Fed-  
7 eral agencies;

8 (C) integrating transportation planning  
9 and environmental review of transportation  
10 projects;

11 (D) expanding eligibility of early acquisi-  
12 tion of property prior to completion of environ-  
13 mental review under the National Environ-  
14 mental Policy Act of 1969 (42 U.S.C. 4321 et  
15 seq.);

16 (E) allowing the use of the construction  
17 manager or general contractor method of con-  
18 tracting in the Federal-aid highway program;

19 (F) establishing a demonstration program  
20 to streamline the relocation process by permit-  
21 ting a lump-sum payment for acquisition and  
22 relocation if elected by the displaced occupant;  
23 and

1 (G) establishing a pilot program to provide  
 2 direct Federal-aid highway funding to local gov-  
 3 ernments.

4 (5) ADVANCING INNOVATIVE PROJECT DELIV-  
 5 ERY.—In order to accelerate project delivery and re-  
 6 duce costs for transportation projects across all  
 7 modes and regardless of project size, to the max-  
 8 imum extent practicable, the Secretary shall use the  
 9 authority under section 304 of title 49, United  
 10 States Code (as amended by section 133(a)).

11 **SEC. 132. EFFICIENCIES IN CONTRACTING.**

12 (a) AUTHORITY.—Section 112(b) of title 23, United  
 13 States Code, is amended by adding at the end the fol-  
 14 lowing:

15 “(4) CONSTRUCTION MANAGER; GENERAL CON-  
 16 TRACTOR.—

17 “(A) 2-PHASES CONTRACT.—

18 “(i) IN GENERAL.—A contracting  
 19 agency may award a 2-phase contract to a  
 20 construction manager or general contractor  
 21 for pre-construction and construction serv-  
 22 ices.

23 “(ii) PRE-CONSTRUCTION PHASE.—In  
 24 the pre-construction phase, the construc-  
 25 tion manager shall provide the contracting

1 agency with advice for scheduling, work se-  
2 quencing, cost engineering,  
3 constructability, cost estimating, and risk  
4 identification.

5 “(iii) PRICE.—Prior to the start of  
6 the second phase, the owner and the con-  
7 struction manager may agree to a price for  
8 the construction of the project or a portion  
9 of the project.

10 “(iv) GENERAL CONTRACTOR.—If an  
11 agreement is reached under clause (iii), the  
12 construction manager shall be considered  
13 the general contractor for the construction  
14 of the project at the negotiated schedule  
15 and price.

16 “(B) SELECTION.—A contract shall be  
17 awarded to a construction manager or general  
18 contractor using a competitive selection process  
19 under which the contract is awarded on the  
20 basis of qualifications, experience, best value, or  
21 any other combination of factors considered ap-  
22 propriate by the contracting agency.

23 “(C) TIMING.—

24 “(i) IN GENERAL.—Prior to the com-  
25 pletion of the process required under sec-



1           tion 102 of the National Environmental  
2           Policy Act of 1969 (42 U.S.C. 4332), a  
3           contracting agency may—

4                   “(I) issue requests for proposals;

5                   “(II) proceed with the award of  
6           the first phase of construction man-  
7           ager or general contractor contract;  
8           and

9                   “(III) issue notices to proceed  
10          with preliminary design.

11          “(ii) COMPLIANCE WITH OTHER  
12          LAW.—If the first phase of a construction  
13          manager or general contractor contract fo-  
14          cuses primarily on 1 alternative, the Sec-  
15          retary shall require that the contract in-  
16          clude appropriate provisions to ensure—

17                   “(I) that the objectives of section  
18          102 of the National Environmental  
19          Policy Act of 1969 (42 U.S.C. 4332)  
20          are achieved; and

21                   “(II) compliance with other ap-  
22          plicable Federal laws and regulations  
23          occurs.

24                   “(iii) REQUIREMENT.—A contracting  
25          agency shall not proceed with the award of



1 **“§ 304. Application of categorical exclusions for**  
2 **multimodal projects**

3 “(a) DEFINITIONS.—In this section:

4 “(1) AGENCY.—The term ‘agency’ has the  
5 meaning given the term in section 139 of title 23.

6 “(2) ENVIRONMENTAL IMPACT STATEMENT.—  
7 The term ‘environmental impact statement’ has the  
8 meaning given the term in section 139 of title 23.

9 “(3) ENVIRONMENTAL REVIEW PROCESS.—The  
10 term ‘environmental review process’ has the meaning  
11 given the term in section 139 of title 23.

12 “(4) LEAD AGENCY.—The term ‘lead agency’  
13 means the Department of Transportation and, if ap-  
14 plicable, any State or local governmental agency that  
15 serves as the lead agency for a multimodal project.

16 “(5) MULTIMODAL PROJECT.—The term  
17 ‘multimodal project’ has the meaning given the term  
18 in section 139 of title 23.

19 “(6) PROJECT.—The term ‘project’ has the  
20 meaning given the term in section 139 of title 23.

21 “(7) STATE TRANSPORTATION DEPARTMENT.—  
22 The term ‘State transportation department’ has the  
23 meaning given the term in section 139 of title 23.

24 “(b) APPLICABILITY.—Any authority provided in this  
25 section may be exercised for any multimodal project, class

1 of projects, or program of projects that is carried out  
2 under this title.

3 “(c) APPLICATION OF CATEGORICAL EXCLUSIONS  
4 FOR MULTIMODAL PROJECTS.—

5 “(1) IN GENERAL.—Subject to paragraph (2),  
6 in considering the environmental impacts of a pro-  
7 posed multimodal project, a lead agency may apply  
8 1 or more categorical exclusions under the National  
9 Environmental Policy Act of 1969 (42 U.S.C. 4321  
10 et seq.) to other components of the project carried  
11 out by a participating agency or State transpor-  
12 tation department if the lead agency determines  
13 that—

14 “(A) based on regulations or procedures of  
15 the lead agency for determining categorical ex-  
16 clusions, the components of the project that fall  
17 under the modal expertise of the lead agency  
18 satisfy the conditions for 1 or more categorical  
19 exclusions under the National Environmental  
20 Policy Act of 1969 (42 U.S.C. 4321 et seq.);  
21 and

22 “(B) the project does not require the prep-  
23 aration of an environmental impact statement.

24 “(2) EXCLUSIONS.—Paragraph (1) shall only  
25 apply if—

1           “(A) the multimodal project is funded  
2 under a grant agreement administered by the  
3 lead agency;

4           “(B) the multimodal project has compo-  
5 nents that require the expertise of a partici-  
6 pating agency to assess the environmental im-  
7 pacts of the components of the project;

8           “(C) each component of the project has  
9 independent utility;

10           “(D) the participating agency, in consulta-  
11 tion with the lead agency, determines that,  
12 based on regulations or procedures of the par-  
13 ticipating agency for determining categorical ex-  
14 clusions, 1 or more categorical exclusions under  
15 the National Environmental Policy Act of 1969  
16 (42 U.S.C. 4321 et seq.) applies to the compo-  
17 nents of the project under the modal expertise  
18 of the participating agency; and

19           “(E) the lead agency determines that—

20                   “(i) the project does not individually  
21 or cumulatively have a significant impact  
22 on the environment; and

23                   “(ii) extraordinary circumstances do  
24 not exist.

25           “(d) MODAL COOPERATION.—



1 **“§ 167. Integration of planning and environmental re-**  
 2 **view**

3 “(a) DEFINITIONS.—In this section:

4 “(1) ENVIRONMENTAL REVIEW PROCESS.—The  
 5 term ‘environmental review process’ has the meaning  
 6 given the term in section 139.

7 “(2) LEAD AGENCY.—The term ‘lead agency’  
 8 has the meaning given the term in section 139.

9 “(3) PLANNING PRODUCT.—The term ‘planning  
 10 product’ means any decision, analysis, study, or  
 11 other documented result of an evaluation or deci-  
 12 sionmaking process that is carried out during trans-  
 13 portation planning.

14 “(4) PROJECT.—The term ‘project’ has the  
 15 meaning given the term in section 139.

16 “(5) PROJECT SPONSOR.—The term ‘project  
 17 sponsor’ has the meaning given the term in section  
 18 139.

19 “(b) PURPOSE AND INTENT.—The purpose of this  
 20 section is to establish the authority, and provide proce-  
 21 dures, for achieving integrated planning and environ-  
 22 mental review processes—

23 “(1) to enable statewide and metropolitan plan-  
 24 ning processes to more effectively serve as the foun-  
 25 dation for highway and transit project decisions;

26 “(2) to foster better decisionmaking;

1           “(3) to reduce duplicative work;

2           “(4) to avoid delays in carrying out transpor-  
3           tation improvements; and

4           “(5) to improve transportation and maintain  
5           environmental protections for communities and the  
6           United States.

7           “(c) ADOPTION OF PLANNING PRODUCTS FOR USE  
8           IN THE ENVIRONMENTAL REVIEW PROCESS.—

9           “(1) IN GENERAL.—Subject to paragraph (3)  
10           and notwithstanding any other provision of law, the  
11           Secretary of Transportation, in consultation with 1  
12           or more lead agencies or project sponsors, may  
13           adopt and use any planning product, in whole or in  
14           part, in the environmental review process of a trans-  
15           portation project or program.

16           “(2) APPLICABILITY.—

17           “(A) IN GENERAL.—Planning decisions  
18           that may be adopted pursuant to this section  
19           include—

20           “(i) a purpose and goal for the pro-  
21           posed action, including whether tolling, pri-  
22           vate financial assistance, or other special  
23           financial measures are necessary to imple-  
24           ment the proposed action;



1           “(ii) the location of the travel cor-  
2           ridor;

3           “(iii) the modal choice, including  
4           whether to implement corridor or subarea  
5           study recommendations to advance dif-  
6           ferent modal solutions as separate projects  
7           with independent utility;

8           “(iv) the elimination of unreasonable  
9           alternatives and the selection of a range of  
10          reasonable alternatives for detailed study  
11          during the environmental review process;

12          “(v) a basic description of the envi-  
13          ronmental setting;

14          “(vi) the methodology to be used in  
15          the analysis; and

16          “(vii) the identification of pro-  
17          grammatic level mitigation for potential  
18          impacts that the Secretary of Transpor-  
19          tation, in conjunction with other applicable  
20          agencies, determines are most effectively  
21          addressed at a regional or national pro-  
22          gram level, including—

23                  “(I) system-level measures to  
24                  avoid, minimize, or mitigate impacts

1 of proposed transportation invest-  
2 ments on environmental resources;

3 “(II) regional ecosystem needs  
4 and opportunities; and

5 “(III) potential mitigation activi-  
6 ties, locations, and investments.

7 “(B) PLANNING ANALYSES.—Examples of  
8 planning analyses that may be adopted under  
9 this section include studies of past, current, or  
10 predicted future—

11 “(i) travel demands;

12 “(ii) regional development and growth  
13 levels;

14 “(iii) local land use, growth manage-  
15 ment, and development patterns;

16 “(iv) population and employment lev-  
17 els;

18 “(v) natural and human environ-  
19 mental conditions;

20 “(vi) environmental resources and en-  
21 vironmentally sensitive areas;

22 “(vii) potential environmental effects,  
23 including the identification of resources of  
24 concern and potential cumulative effects on

1           those resources, as a result of a statewide  
2           or regional cumulative effects assessment;

3           “(viii) mitigation needs for a proposed  
4           action or for programmatic level mitigation  
5           for potential effects that the Secretary of  
6           Transportation determines are most effec-  
7           tively addressed at a regional or national  
8           program level; and

9           “(ix) safety measures.

10           “(3) CONDITIONS.—The adoption and use of a  
11           planning product under this section shall be subject  
12           to a determination by the Secretary of Transpor-  
13           tation, in consultation with appropriate lead agencies  
14           and project sponsors, that—

15           “(A) the planning product has been devel-  
16           oped through a planning process carried out  
17           pursuant to applicable Federal law (including  
18           regulations);

19           “(B) the planning process includes broad  
20           multidisciplinary consideration of systems-level  
21           or corridor-wide transportation needs and an  
22           analysis of potential effects;

23           “(C) during the planning process—

24           “(i) notice of the proposed planning  
25           product and planning process has been

1 provided through publication or other  
2 means to—

3 “(I) each Federal, State, local,  
4 and tribal government that may have  
5 an interest in the proposed project or  
6 program; and

7 “(II) members of the general  
8 public; and

9 “(ii) the entities described in clause  
10 (i)(I) have been provided an opportunity to  
11 participate in the planning process;

12 “(D) prior to determining the scope of the  
13 environmental review process, each lead agency  
14 has made documentation relating to the plan-  
15 ning product available to the entities described  
16 in subparagraph (C)(i)(I);

17 “(E) no significant new information or new  
18 circumstance exists that has a reasonable likeli-  
19 hood of affecting the continued validity of the  
20 planning product;

21 “(F) the planning product—

22 “(i) has a rational basis;

23 “(ii) is based on reliable and reason-  
24 ably current data; and

1                   “(iii) in the case of an analysis, is  
2                   based on reasonable and scientifically ac-  
3                   ceptable methodologies;

4                   “(G) the planning product is documented  
5                   in sufficient detail to support the decision or re-  
6                   sults of the analysis and to meet any require-  
7                   ments for use of the information in the environ-  
8                   mental review process; and

9                   “(H) the planning product is appropriate  
10                  for adoption and use in the environmental re-  
11                  view process for the project or program.

12                  “(4) EFFECT OF ADOPTION.—

13                  “(A) IN GENERAL.—Notwithstanding any  
14                  other law, any planning product adopted by the  
15                  Secretary of Transportation under this section  
16                  shall not be reconsidered or subject to addi-  
17                  tional interagency consultation while the envi-  
18                  ronmental review process for a project or pro-  
19                  gram is being carried out unless the Secretary  
20                  of Transportation, in consultation with applica-  
21                  ble lead agencies and project sponsors, deter-  
22                  mines that there is significant new information  
23                  or new circumstances that affect the continued  
24                  validity or appropriateness of the adopted plan-  
25                  ning product.

1           “(B) TRANSFERABILITY.—A planning  
2           product adopted by the Secretary of Transpor-  
3           tation under this section may be relied on and  
4           used by other Federal agencies in carrying out  
5           an environmental review of a project or pro-  
6           gram.

7           “(d) ADMINISTRATION.—

8           “(1) IN GENERAL.—The authority granted  
9           under this section shall be broadly construed and  
10          may be applied to any project, class of projects, or  
11          program carried out under this title.

12          “(2) APPLICABILITY.—

13                 “(A) IN GENERAL.—The environmental re-  
14                 view process under the National Environmental  
15                 Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
16                 shall not apply to any transportation planning  
17                 process carried out under this title.

18                 “(B) SCOPE.—If an environmental review  
19                 process is commenced as a part of, or concu-  
20                 rently with, a transportation planning activity  
21                 under this title, the project shall remain exempt  
22                 from the applicable provisions of the National  
23                 Environmental Policy Act of 1969 (42 U.S.C.  
24                 4321 et seq.).”.

1 (b) CONFORMING AMENDMENT.—The analysis for  
 2 chapter 1 of title 23, United States Code, is amended by  
 3 adding at the end the following:

“Sec. 167. Integration of planning and environmental review”.

4 **SEC. 135. NATIONAL ENVIRONMENTAL POLICY ACT PROC-**  
 5 **ESS REFORMS.**

6 Section 139 of title 23, United States Code, is  
 7 amended—

8 (1) in subsection (a)—

9 (A) in paragraph (5), by striking “or chap-  
 10 ter 53 of title 49”;

11 (B) in paragraph (6), by striking “, public  
 12 transportation capital project,”;

13 (2) in subsection (c)(3), by striking “or chapter  
 14 53 of title 49”;

15 (3) by redesignating subsections (f), (g), (h),  
 16 (i), (j), (k), and (l) as subsections (g), (h), (i), (k),  
 17 (l), (m), and (n), respectively;

18 (4) by inserting after subsection (e) the fol-  
 19 lowing:

20 “(f) SCOPING.—

21 “(1) IN GENERAL.—The lead agency shall limit  
 22 the scope of documents prepared under the National  
 23 Environmental Policy Act of 1969 (42 U.S.C. 4321  
 24 et seq.) to the relevant and important environmental

1 issues directly relating to decisions with respect to  
2 the proposed action.

3 “(2) DECISION.—The Secretary shall determine  
4 the relevant and important issues described in para-  
5 graph (1) to be analyzed after considering informa-  
6 tion in the scoping process.

7 “(3) RECONSIDERATION.—The determination of  
8 the Secretary regarding the relevant and important  
9 issues to be analyzed is subject to reconsideration  
10 only if significant new circumstances or information  
11 arise that bear on the proposal or the impacts of the  
12 proposal.”;

13 (5) in subsection (g)(4) (as redesignated by  
14 paragraph (3))—

15 (A) in subparagraph (B)—

16 (i) by striking “Following participa-  
17 tion” and inserting the following:

18 “(i) IN GENERAL.—Following partici-  
19 pation”; and

20 (ii) by adding at the end the fol-  
21 lowing:

22 “(ii) BASIS FOR SELECTION.—The se-  
23 lection of reasonable alternatives shall be  
24 based upon—



1           “(I) the likely ability of the alter-  
2 natives to satisfy the transportation  
3 elements of the purpose and need for  
4 the project;

5           “(II) the likely requirements of  
6 other Federal environmental statutes;

7           “(III) costs;

8           “(IV) the needs of affected local  
9 governments;

10          “(V) whether the alternative is  
11 substantially similar to other alter-  
12 natives selected for detailed study;  
13 and

14          “(VI) other circumstances, dis-  
15 cussed in the scoping process, that the  
16 lead agency determines to be relevant  
17 to the particular project, on the condi-  
18 tion that, after the Secretary makes  
19 the determination under subsection (f)  
20 relating to scoping, additional reason-  
21 able alternatives may be selected for  
22 analysis only if the lead agency deter-  
23 mines that significant new informa-  
24 tion justifies expansion of the range of

1 reasonable alternatives selected for  
2 analysis.”;

3 (B) in subparagraph (C)—

4 (i) by striking “The lead agency” and  
5 inserting the following:

6 “(i) IN GENERAL.—The lead agency”;

7 (ii) in clause (i) (as designated by  
8 clause (i)), by striking “at appropriate  
9 times during the study process” and in-  
10 sserting “during scoping or at such other  
11 time during project development as the  
12 lead agency determines to be appro-  
13 priate,”; and

14 (iii) by adding at the end the fol-  
15 lowing:

16 “(ii) RECONSIDERATION.—A decision  
17 described in clause (i) may be reconsidered  
18 at any time the lead agency determines the  
19 reconsideration to be appropriate.”; and

20 (C) in subparagraph (D), by striking “At  
21 the discretion of the lead agency” and inserting  
22 the following:

23 “(i) IN GENERAL.—A preferred alter-  
24 native may be identified at any time after  
25 initiation of the scoping process.

1                   “(ii) IDENTIFICATION OF PREFERRED  
2                   ALTERNATIVE.—The draft environmental  
3                   impact statement shall identify the pre-  
4                   ferred alternative, if any, for a project.

5                   “(iii) FURTHER DEVELOPMENT.—At  
6                   the discretion of the lead agency”;

7                   (6) in subsection (h) (as so redesignated)—

8                   (A) by striking paragraph (3); and

9                   (B) by redesignating paragraph (4) as  
10                  paragraph (3);

11                  (7) in subsection (i) (as so redesignated), by  
12                  striking paragraph (4) and inserting the following:

13                  “(4) ISSUE RESOLUTION.—

14                         “(A) MEETING OF PARTICIPATING AGEN-  
15                         CIES.—

16                                 “(i) IN GENERAL.—On the request of  
17                                 a Federal agency of jurisdiction, project  
18                                 sponsor, or the Governor of a State in  
19                                 which the project is located, the lead agen-  
20                                 cy shall promptly convene a meeting with  
21                                 the relevant participating agencies, the  
22                                 project sponsor, and the Governor (if the  
23                                 meeting is requested by the Governor) to  
24                                 resolve issues that could delay completion  
25                                 of the environmental review process or

1 could result in denial of any approvals re-  
2 quired for the project under applicable  
3 laws, including issue resolution relating to  
4 applications for project permits, licenses,  
5 or other approvals referred to in paragraph  
6 (5).

7 “(ii) MEETINGS CONVENED BY LEAD  
8 AGENCY.—The lead agency may convene  
9 an issue resolution meeting under this sub-  
10 section with the participating agencies and  
11 project sponsor at any time the lead agen-  
12 cy determines a meeting to be appropriate.

13 “(iii) TIMING.—A meeting convened  
14 under this subsection at the request of a  
15 Federal agency of jurisdiction, the project  
16 sponsor, or the Governor shall be held not  
17 later than 14 days after the date of receipt  
18 of the request unless the lead agency deter-  
19 mines there is just cause to extend the  
20 time period for a meeting.

21 “(B) ELEVATION IF RESOLUTION IS NOT  
22 ACHIEVED.—

23 “(i) IN GENERAL.—If a resolution is  
24 not achieved by the date that is 30 days  
25 after the later of the date of a meeting de-

1 scribed in subparagraph (A) and the date  
2 of a determination by the lead agency that  
3 all information necessary to resolve the  
4 issue has been obtained, the Secretary—

5 “(I) may convene an issue resolu-  
6 tion meeting of the lead agency, the  
7 heads of the relevant participating  
8 agencies, the project sponsor, and the  
9 Governor (if the initial issue resolu-  
10 tion meeting is requested by the Gov-  
11 ernor) to resolve the issues; and

12 “(II) in the case of a Federal  
13 agency of jurisdiction that has not  
14 made a decision within the time pe-  
15 riod described in subsection (h)(3)(A),  
16 shall convene an issue resolution  
17 meeting to resolve the issues.

18 “(ii) TIMING.—A meeting convened by  
19 the Secretary under this subparagraph  
20 shall be held not later than 30 days after  
21 the end of the 30-day period described in  
22 clause (i) for resolution of issues following  
23 the date of a meeting described in sub-  
24 paragraph (A).

1           “(iii) NOTIFICATION.—The Secretary  
2           shall notify the Committee on Environment  
3           and Public Works of the Senate, the Com-  
4           mittee on Transportation and Infrastruc-  
5           ture of the House of Representatives, and  
6           the Council on Environmental Quality that  
7           a meeting is to be convened under this  
8           paragraph.

9           “(5) DEADLINES FOR DECISIONS UNDER  
10          OTHER LAWS.—Notwithstanding any other provision  
11          of law (including a regulation)—

12           “(A) subject to subparagraph (B), a deci-  
13           sion relating to a transportation project under  
14           any Federal law (including a regulation and any  
15           issuance or denial of a permit, license, or other  
16           approval) shall be made by the Federal agency  
17           of jurisdiction by the later of—

18           “(i) the date that is 180 days after  
19           the date on which the Federal lead agency  
20           issues a decision on the project under the  
21           National Environmental Policy Act of  
22           1969 (42 U.S.C. 4321 et seq.) and (if ap-  
23           plicable) section 138 of this title; and

1           “(ii) the date that is 180 days after  
2           the date on which an application is sub-  
3           mitted for the permit, license, or approval;

4           “(B) the Secretary may extend the time  
5           for a decision under subparagraph (A) for just  
6           cause;

7           “(C) the application for a project permit,  
8           license, or other approval shall be approved by  
9           operation of law without further action by the  
10          Federal agency of jurisdiction if—

11          “(i) within the time for a decision  
12          under subparagraph (A), the Federal agen-  
13          cy of jurisdiction has not issued a final de-  
14          cision or obtained concurrence to delay de-  
15          cision by the project sponsor; or

16          “(ii) the Federal agency has not  
17          issued a final decision within 30 days, or  
18          such longer time as the Secretary may es-  
19          tablish for just cause, after the conclusion  
20          of a meeting convened by the Secretary  
21          pursuant to paragraph (4)(B);

22          “(D) a permit, license, or other approval  
23          approved pursuant to this subsection shall not  
24          be subject to judicial review; and

1           “(E) the Secretary may issue a written  
2           finding verifying the approval of an application,  
3           as submitted to the Federal agency of jurisdic-  
4           tion, in accordance with this subsection.”;

5           (8) by inserting after subsection (i) (as so re-  
6           designated) the following:

7           “(j) CONSOLIDATED STATEMENTS AND DECI-  
8           SIONS.—

9           “(1) IN GENERAL.—In the event that a pre-  
10          ferred alternative is identified in the draft environ-  
11          mental impact statement, and notwithstanding any  
12          other provision of law or regulation, the Secretary  
13          must, to the maximum extent practicable combine a  
14          final environmental impact statement and a record  
15          of decision into a single document following any pub-  
16          lic hearings required by section 128 of this title as  
17          long as, at least 30 days prior to the issuance of the  
18          combined final environmental impact statement and  
19          record of decision, the lead agency gives notice to  
20          the agencies participating in the environmental re-  
21          view process and the public of the proposed decision  
22          of the lead agency.

23          “(2) NOTICE CONTENT.—The notice described  
24          in paragraph (1) shall include—



1           “(A) a brief summary description of the  
2 proposed decision, including the anticipated se-  
3 lected alternative and any mitigation commit-  
4 ments that will be required under the decision;  
5 and

6           “(B) a deadline of not less than 30 days  
7 after the date on which the participating agency  
8 receives the notice for any predecisional referral  
9 under part 1504 of title 40, Code of Federal  
10 Regulations (or successor regulations).

11           “(3) MANNER OF NOTICE.—

12           “(A) IN GENERAL.—The lead agency may  
13 give the required notice to agencies by mail, e-  
14 mail, fax, or other commercially acceptable  
15 means that permit confirmation of delivery.

16           “(B) PUBLIC NOTICE.—The lead agency  
17 may give the required public notice by means of  
18 publication of the notice in a newspaper of  
19 statewide circulation, in the Federal Register,  
20 or by posting the notice on the website of the  
21 project.”;

22           (9) in subsection (l)(1) (as so redesignated)—

23           (A) by striking “or chapter 53 of title 49”;

24           and

25           (B) by striking “or such chapter 53”;

1           (10) in subsection (m) (as so redesignated), by  
2 striking paragraph (2) and inserting the following:

3           “(2) RELATIONSHIP TO OTHER STATUTES.—If  
4 any provision of the National Environmental Policy  
5 Act of 1969 (42 U.S.C. 4321 et seq.), any regula-  
6 tion promulgated under that Act, or any other Fed-  
7 eral environmental statute, conflicts with this sec-  
8 tion, the procedures in this section shall take prece-  
9 dence.”; and

10           (11) in subsection (n)(1) (as so redesignated),  
11 by striking “or public transportation capital”.

12 **SEC. 136. CLARIFIED ELIGIBILITY FOR EARLY ACQUISITION**  
13                           **ACTIVITIES PRIOR TO COMPLETION OF ENVI-**  
14                           **RONMENTAL REVIEW PROCESS.**

15           (a) ACQUISITION OF REAL PROPERTY.—Notwith-  
16 standing any other provision of law, the acquisition of real  
17 property in anticipation of a federally assisted or federally  
18 approved surface transportation project that may use the  
19 real property is not prohibited prior to the date on which  
20 the environmental review process under the National Envi-  
21 ronmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)  
22 for the surface transportation project is completed, subject  
23 to the conditions that the acquisition does not have an  
24 adverse environmental effect or limit the choice of reason-  
25 able alternatives for the proposed project.

1 (b) EARLY ACQUISITION OF REAL PROPERTY INTER-  
2 ESTS FOR HIGHWAYS.—Section 108 of title 23, United  
3 States Code, is amended—

4 (1) in the section heading, by inserting “**IN-**  
5 **TERESTS**” after “**REAL PROPERTY**”;

6 (2) in subsection (a), by inserting “interests”  
7 after “real property” each place it appears;

8 (3) in subsection (b), by striking “rights-of-  
9 way” and inserting “real property interests”;

10 (4) in subsection (c)—

11 (A) in the subsection heading, by striking  
12 “RIGHTS-OF-WAY” and inserting “REAL PROP-  
13 erty INTERESTS”;

14 (B) in paragraph (1)—

15 (i) in the matter preceding subpara-  
16 graph (A), by inserting “at any time” after  
17 “may be used”; and

18 (ii) in subparagraph (A)—

19 (I) by striking “acquisition of  
20 rights-of-way” and inserting “acqui-  
21 sition of real property interests”; and

22 (II) by striking “, if the rights-  
23 of-way are subsequently incorporated  
24 into a project eligible for surface  
25 transportation program funds”; and

1 (C) by striking paragraph (2) and insert-  
2 ing the following:

3 “(2) TERMS AND CONDITIONS.—

4 “(A) IN GENERAL.—Subject to the other  
5 provisions in this section, a public authority  
6 may acquire real property that may be used for  
7 a project prior to the date on which the envi-  
8 ronmental review process under the National  
9 Environmental Policy Act of 1969 (42 U.S.C.  
10 4321 et seq.) for the project is completed.

11 “(B) CONDITIONS.—An acquisition de-  
12 scribed in subparagraph (A) may be authorized  
13 by project agreement and shall be eligible for  
14 Federal-aid reimbursement as a project expense  
15 if the Secretary finds that the acquisition—

16 “(i) does not cause any significant ad-  
17 verse environmental impact;

18 “(ii) does not limit the choice of rea-  
19 sonable alternatives for the project or oth-  
20 erwise influence the decision of the Sec-  
21 retary on any approval required for the  
22 project;

23 “(iii) is consistent with the State  
24 transportation planning process under sec-  
25 tion 135;

1           “(iv) complies with other applicable  
2 Federal laws (including regulations);

3           “(v) is carried out through negotia-  
4 tion, without the threat of condemnation;  
5 and

6           “(vi) together with any relocation as-  
7 sistance provided, complies with—

8                   “(I) the Uniform Relocation As-  
9 sistance and Real Property Acquisi-  
10 tion Policies Act of 1970 (42 U.S.C.  
11 4601 et seq.); and

12                   “(II) title VI of the Civil Rights  
13 Act of 1964 (42 U.S.C. 2000d et  
14 seq.).

15           “(C) DEVELOPMENT.—Real property ac-  
16 quired under this subsection may not be devel-  
17 oped in anticipation of the project until the date  
18 on which all required environmental reviews for  
19 the project have been completed.

20           “(D) REIMBURSEMENT.—If Federal-aid  
21 reimbursement is made for early acquired real  
22 property under this subsection and the property  
23 is not incorporated into a project eligible for  
24 surface transportation funds in the time period  
25 described in subsection (a)(2), the Secretary

1 shall offset the amount so reimbursed against  
2 funds apportioned to the State.

3 “(E) OTHER CONDITIONS.—The Secretary  
4 may establish such other conditions or restric-  
5 tions on the acquisition of real property under  
6 this section as the Secretary determines to be  
7 necessary.”.

8 **SEC. 137. SURFACE TRANSPORTATION PROJECT DELIVERY**  
9 **PROGRAM.**

10 (a) IN GENERAL.—Section 327 of title 23, United  
11 States Code, is amended—

12 (1) in the section heading, by striking  
13 “**PILOT**”; and

14 (2) by striking “pilot” each place it appears.

15 (b) ESTABLISHMENT.—Section 327(a)(2) of title 23,  
16 United States Code, is amended—

17 (1) in subparagraph (B), by striking clause (ii)  
18 and inserting the following:

19 “(ii) the Secretary may not assign any  
20 responsibility imposed on the Secretary by  
21 section 134 or 135;” and

22 (2) by adding at the end the following:

23 “(F) SOVEREIGN IMMUNITY.—By exe-  
24 cuting an agreement with the Secretary and as-

1           suming the responsibilities of the Secretary  
2           under this section, a State—

3                   “(i) waives the sovereign immunity of  
4                   the State under the Eleventh Amendment  
5                   of the Constitution of the United States  
6                   from any civil action brought in a Federal  
7                   court; and

8                   “(ii) expressly consents to accept the  
9                   jurisdiction of the Federal courts with re-  
10                  spect to any action relating to the compli-  
11                  ance, discharge, and enforcement of any  
12                  responsibility of the Secretary that the  
13                  State assumes.”.

14           (c) STATE PARTICIPATION.—Section 327(b) of title  
15 23, United States Code, is amended—

16                   (1) by striking paragraph (1);

17                   (2) by redesignating paragraphs (2) through  
18                   (5) as paragraphs (1) through (4), respectively; and

19                   (3) in paragraph (3)(A) (as redesignated by  
20                   paragraph (2)), by striking “paragraph (2)” and in-  
21                   serting “paragraph (1)”.

22           (d) WRITTEN AGREEMENT.—Section 327(c) of title  
23 23, United States Code, is amended—

24                   (1) in paragraph (3), by striking the period at  
25                   the end and inserting a semicolon; and

1 (2) by adding at the end the following:

2 “(4) require the State to provide to the Sec-  
3 retary any information the Secretary determines to  
4 be necessary to ensure that the State is adequately  
5 carrying out the responsibilities assigned to the  
6 State, including periodic written reports; and

7 “(5) require the Secretary—

8 “(A) after a period of 5 years, to evaluate  
9 the ability of the State to carry out the respon-  
10 sibilities assumed under this section;

11 “(B) if the Secretary determines that the  
12 State is not ready to effectively carry out the  
13 responsibilities the State has assumed, to re-  
14 evaluate the readiness of the State by not later  
15 than 3 years after the initial evaluation under  
16 subparagraph (A) and every 3 years thereafter,  
17 until the Secretary determines that the State is  
18 ready to assume those responsibilities on a per-  
19 manent basis; and

20 “(C) after the Secretary has determined  
21 under subparagraph (A) or (B) that the State  
22 is ready to permanently assume the responsibil-  
23 ities under this section, to notify the State—

24 “(i) of that determination; and



1                   “(ii) that no further evaluations shall  
2                   be required.”.

3       (e) AUDITS.—Section 327 of title 23, United States  
4 Code is amended—

5           (1) by striking subsection (g); and

6           (2) by redesignating subsections (h) and (i) as  
7       (g) and (h), respectively.

8       (f) TERMINATION.—Section 327(h) of title 23,  
9 United States Code (as redesignated by subsection (e)(2)),  
10 is amended—

11           (1) by striking paragraph (1);

12           (2) by redesignating paragraph (2) as para-  
13 graph (1); and

14           (3) by inserting after paragraph (1) (as redesign-  
15 ated by paragraph (2)) the following:

16           “(2) TERMINATION BY STATE.—Subject to such  
17 terms and conditions as the Secretary may specify,  
18 the State may terminate the participation of the  
19 State in the program at any time by providing notice  
20 of the termination to the Secretary not later than 90  
21 days before the State intends to terminate that par-  
22 ticipation.”.

23       (g) CONFORMING AMENDMENT.—The analysis for  
24 chapter 3 of title 23, United States Code, is amended by

1 striking the item relating to section 327 and inserting the  
2 following:

“327. Surface transportation project delivery program”.

3 **SEC. 138. STATE ASSUMPTION OF RESPONSIBILITIES FOR**  
4 **CATEGORICAL EXCLUSIONS.**

5 Section 326(a) of title 23, United States Code, is  
6 amended by adding at the end the following:

7 “(4) STATE ASSUMPTION OF RESPONSIBILITIES  
8 FOR CATEGORICAL EXCLUSIONS.—

9 “(A) SOVEREIGN IMMUNITY.—By exe-  
10 cuting a memorandum of understanding with  
11 the Secretary under subsection (c) and assum-  
12 ing the responsibilities of the Secretary under  
13 this section, a State—

14 “(i) waives the sovereign immunity of  
15 the State under the Eleventh Amendment  
16 of the Constitution of the United States  
17 from any civil action brought in a Federal  
18 court; and

19 “(ii) expressly consents to accept the  
20 jurisdiction of the Federal courts with re-  
21 spect to any action relating to the compli-  
22 ance, discharge, and enforcement of any  
23 responsibility of the Secretary that the  
24 State assumes.

1           “(B) TERMINATION BY STATE.—Subject to  
2           such terms and conditions as the Secretary may  
3           specify, the State may terminate the participa-  
4           tion of the State in the program at any time by  
5           providing notice of the termination to the Sec-  
6           retary not later than 90 days before the State  
7           intends to terminate that participation.”.

8 **SEC. 139. EMERGENCY WAIVER.**

9           Any road, highway, or bridge that is in operation for  
10          fewer than 30 years or that is under construction, and  
11          that is damaged by major disaster or emergency declared  
12          by the Governor of the State and concurred in by the Sec-  
13          retary, or declared by the President pursuant to the Rob-  
14          ert T. Stafford Disaster Relief and Emergency Assistance  
15          Act (42 U.S.C. 5121)—

16                (1) may be reconstructed in the same location  
17                with the same capacity, dimensions, and design as  
18                before the disaster or emergency; and

19                (2) shall be exempt from any environmental re-  
20                views, approvals, licensing, and permit requirements  
21                under—

22                        (A) the National Historic Preservation Act  
23                        (16 U.S.C. 470 et seq.);

24                        (B) the Migratory Bird Treaty Act (16  
25                        U.S.C. 703 et seq.);

1 (C) the Fish and Wildlife Coordination Act  
2 (16 U.S.C. 661 et seq.);

3 (D) the Wild and Scenic Rivers Act (16  
4 U.S.C. 1271 et seq.);

5 (E) the Endangered Species Act of 1973  
6 (16 U.S.C. 1531 et seq.), except when the re-  
7 construction occurs in designated critical habi-  
8 tat for threatened and endangered species;

9 (F) sections 402 and 404 of the Federal  
10 Water Pollution Control Act (33 U.S.C. 1342,  
11 1344);

12 (G) the National Environmental Policy Act  
13 of 1969 (42 U.S.C. 4321 et seq.);

14 (H) Executive Order 11990 (42 U.S.C.  
15 4321 note; relating to the protection of wet-  
16 land); and

17 (I) any Federal law (including regulations)  
18 requiring no net loss of wetland.

19 **SEC. 140. CEMENT SECTOR REGULATORY RELIEF.**

20 (a) ESTABLISHMENT OF STANDARDS.—In lieu of the  
21 rules specified in subsection (b), and notwithstanding the  
22 date by which those rules would otherwise be required to  
23 be promulgated, the Administrator of the Environmental  
24 Protection Agency (referred to in this section as the “Ad-  
25 ministrator”) shall—

1           (1) propose regulations for the Portland cement  
2 manufacturing industry and Portland cement plants  
3 that are subject to any of the rules specified in sub-  
4 section (b) that—

5           (A) establish maximum achievable control  
6 technology standards, performance standards,  
7 and other requirements under sections 112 and  
8 129, as applicable, of the Clean Air Act (42  
9 U.S.C. 7412, 7429); and

10          (B) identify nonhazardous secondary mate-  
11 rials that, when used as fuels in combustion  
12 units of that industry and those plants, qualify  
13 as solid waste under the Solid Waste Disposal  
14 Act (42 U.S.C. 6901 et seq.) for purposes of  
15 determining the extent to which the combustion  
16 units are required to meet the emission stand-  
17 ards under section 112 or 129 of the Clean Air  
18 Act (42 U.S.C. 7412, 7429); and

19          (2) promulgate final versions of those regula-  
20 tions by not later than—

21           (A) the date that is 15 months after the  
22 date of enactment of this Act; or

23           (B) such later date as may be determined  
24 by the Administrator.

25          (b) STAY OF EARLIER RULES.—

1           (1) PORTLAND-SPECIFIC RULES.—The final  
2 rule entitled “National Emission Standards for Haz-  
3 arduous Air Pollutants from the Portland Cement  
4 Manufacturing Industry and Standards of Perform-  
5 ance for Portland Cement Plants” (75 Fed. Reg.  
6 54970 (September 9, 2010)) shall be—

7                   (A) of no force or effect;

8                   (B) treated as though the rule had never  
9 taken effect; and

10                  (C) replaced in accordance with subsection

11                   (a).

12           (2) OTHER RULES.—

13                  (A) IN GENERAL.—The final rules de-  
14 scribed in subparagraph (B), to the extent that  
15 those rules apply to the Portland cement manu-  
16 facturing industry and Portland cement plants  
17 shall be—

18                   (i) of no force or effect;

19                   (ii) treated as though the rules had  
20 never taken effect; and

21                   (iii) replaced in accordance with sub-  
22 section (a).

23                  (B) DESCRIPTION OF RULES.—The final  
24 rules described in this subparagraph are—

1 (i) the final rule entitled “Standards  
2 of Performance for New Stationary  
3 Sources and Emission Guidelines for Ex-  
4 isting Sources: Commercial and Industrial  
5 Solid Waste Incineration Units” (76 Fed.  
6 Reg. 15704 (March 21, 2011)); and

7 (ii) the final rule entitled “Identifica-  
8 tion of Non-Hazardous Secondary Mate-  
9 rials That Are Solid Waste” (76 Fed. Reg.  
10 15456 (March 21, 2011)).

11 (c) ESTABLISHMENT OF COMPLIANCE DATES.—For  
12 each regulation promulgated pursuant to subsection (a),  
13 the Administrator—

14 (1) shall establish a date for compliance with  
15 standards and requirements under the regulation  
16 that is, notwithstanding any other provision of law,  
17 not earlier than 5 years after the effective date of  
18 the regulation; and

19 (2) in proposing a date for that compliance,  
20 shall take into consideration—

21 (A) the costs of achieving emission reduc-  
22 tions;

23 (B) any nonair quality health and environ-  
24 mental impacts and energy requirements of the  
25 standards and requirements;

1 (C) the feasibility of implementing the  
2 standards and requirements, including the time  
3 necessary—

4 (i) to obtain necessary permit approv-  
5 als; and

6 (ii) to procure, install, and test con-  
7 trol equipment;

8 (D) the availability of equipment, sup-  
9 pliers, and labor, given the requirements of the  
10 regulation and other proposed or finalized regu-  
11 lations of the Administrator; and

12 (E) potential net employment impacts.

13 (d) NEW SOURCES.—The date on which the Adminis-  
14 trator proposes a regulation pursuant to subsection (a)(1)  
15 establishing an emission standard under section 112 or  
16 129 of the Clean Air Act (42 U.S.C. 7412, 7429) shall  
17 be treated as the date on which the Administrator first  
18 proposes such a regulation for purposes of applying—

19 (1) the definition of the term “new source”  
20 under section 112(a)(4) of that Act (42 U.S.C.  
21 7412(a)(4)); or

22 (2) the definition of the term “new solid waste  
23 incineration unit” under section 129(g)(2) of that  
24 Act (42 U.S.C. 7429(g)(2)).



1 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion restricts or otherwise affects paragraphs (3)(B) and  
3 (4) of section 112(i) of the Clean Air Act (42 U.S.C.  
4 7412(i)).

5 (f) ENERGY RECOVERY AND CONSERVATION.—Not-  
6 withstanding any other provision of law, and to ensure the  
7 recovery and conservation of energy consistent with the  
8 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), in pro-  
9 mulgating regulations under subsection (a) addressing the  
10 subject matter of the rules specified in subsection (b)(2),  
11 the Administrator shall—

12 (1) adopt the definitions of the terms “commer-  
13 cial and industrial solid waste incineration unit”,  
14 “commercial and industrial waste”, and “contained  
15 gaseous material” in the rule entitled “Standards  
16 for Performance of New Stationary Sources and  
17 Emission Guidelines for Existing Sources: Commer-  
18 cial and Industrial Solid Waste Incineration Units”  
19 (65 Fed. Reg. 75338 (December 1, 2000)); and

20 (2) identify nonhazardous secondary material to  
21 be solid waste (as defined in section 1004 of the  
22 Solid Waste Disposal Act (42 U.S.C. 6903)) only  
23 if—

24 (A) the material meets that definition of  
25 commercial and industrial waste; or

1 (B) if the material is a gas, the material  
2 meets that definition of contained gaseous ma-  
3 terial.

4 (g) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN  
5 PRACTICE.—In promulgating regulations under sub-  
6 section (a), the Administrator shall ensure, to the max-  
7 imum extent practicable, that emission standards for ex-  
8 isting and new sources established under section 112 or  
9 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as ap-  
10 plicable, can be met under actual operating conditions con-  
11 sistently and concurrently with emission standards for all  
12 other air pollutants covered by regulations applicable to  
13 the source category, taking into account—

- 14 (1) variability in actual source performance;
- 15 (2) source design;
- 16 (3) fuels;
- 17 (4) inputs;
- 18 (5) controls;
- 19 (6) ability to measure the pollutant emissions;
- 20 and
- 21 (7) operating conditions.

22 (h) REGULATORY ALTERNATIVES.—For each regula-  
23 tion promulgated under subsection (a), from among the  
24 range of regulatory alternatives authorized under the  
25 Clean Air Act (42 U.S.C. 7401 et seq.), including work

1 practice standards under section 112(h) of that Act (42  
2 U.S.C. 7412(h)), the Administrator shall impose the least  
3 burdensome, consistent with the purposes of that Act and  
4 Executive Order 13563 (76 Fed. Reg. 3821 (January 21,  
5 2011)).

## 6 **TITLE II—PUBLIC** 7 **TRANSPORTATION**

### 8 **SEC. 201. PUBLIC TRANSPORTATION.**

9 (a) EXTENSION FOR PUBLIC TRANSPORTATION.—  
10 Except as otherwise provided in this section, requirements,  
11 authorities, conditions, eligibilities, limitations, and other  
12 provisions authorized under title III of the SAFETEA—  
13 LU (Public Law 109–59; 119 Stat. 2022), title III of the  
14 Intermodal Surface Transportation Efficiency Act of 1991  
15 (Public Law 102–240; 105 Stat. 2087), title III of the  
16 Transportation Equity Act for the 21st Century (Public  
17 Law 105–178; 112 Stat. 338), and chapter 53 of title 49,  
18 United States Code, which would otherwise expire on or  
19 cease to apply after March 31, 2012, are incorporated by  
20 reference and shall continue in effect until September 30,  
21 2013.

22 (b) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) MASS TRANSIT ACCOUNT.—There shall be  
24 available from the Mass Transit Account of the  
25 Highway Trust Fund for each of fiscal years 2012

1 and 2013, an amount equal to the total amount au-  
2 thORIZED to be appropriated out of the Mass Transit  
3 Account of the Highway Trust Fund for programs,  
4 projects, and activities for fiscal year 2011 under  
5 the SAFETEA-LU (Public Law 109-59) and under  
6 chapter 53 of title 49, United States Code.

7 (2) GENERAL FUND.—There is authorized to be  
8 appropriated from the General Fund of the Treasury  
9 for each of fiscal years 2012 and 2013, an amount  
10 equal to the total amount authorized to be appro-  
11 priated from the General Fund of the Treasury for  
12 programs, projects, and activities for fiscal year  
13 2011 under the SAFETEA-LU (Public Law 109-  
14 59) and under chapter 53 of title 49, United States  
15 Code.

16 (c) CONTRACT AUTHORITY.—Funds made available  
17 under this section from the Mass Transit Account of the  
18 Highway Trust Fund shall be available for obligation in  
19 the same manner as provided for under section 5338(f)(1)  
20 of title 49, United States Code.

21 (d) USE OF FUNDS.—Funds authorized to be appro-  
22 priated or made available for obligation and expended  
23 under this section shall be distributed, administered, lim-  
24 ited, and made available for obligation in the same manner  
25 and at the same rate as funds authorized to be appro-

1 priated or made available for fiscal year 2011 to carry out  
2 programs, projects, activities, eligibilities, and require-  
3 ments under the SAFETEA-LU (Public Law 109-59),  
4 title III of the Intermodal Surface Transportation Effi-  
5 ciency Act of 1991 (Public Law 102-240; 105 Stat.  
6 2087), title III of the Transportation Equity Act for the  
7 21st Century (Public Law 105-178; 112 Stat. 338), and  
8 chapter 53 of title 49, United States Code, including sec-  
9 tion 5338(f)(1) of such title 49.

10 (e) DISTRIBUTION OF FUNDS UNDER TITLE III OF  
11 SAFETEA-LU.—Funds authorized to be appropriated or  
12 made available for programs continued under this section  
13 shall be distributed to those programs in the same propor-  
14 tion as funds were allocated for those programs for fiscal  
15 year 2011, except that any designations for specific activi-  
16 ties in sections 3044 and 3046 of the SAFETEA-LU  
17 shall not be required to be continued.

18 (f) DISADVANTAGED BUSINESS ENTERPRISES.—Sec-  
19 tion 1101(b) of the SAFETEA-LU (23 U.S.C. 101 note)  
20 shall apply with respect to any program under title III  
21 of the SAFETEA-LU (Public Law 109-59) or chapter  
22 53 of title 49, United States Code, that receives funds au-  
23 thorized to be appropriated or made available for obliga-  
24 tion and expended under this section.

1 (g) OBLIGATION CEILING.—Section 3040 of the  
 2 SAFETEA–LU (Public Law 109–59; 119 Stat. 1639) is  
 3 amended by striking paragraph (8) and inserting the fol-  
 4 lowing

5 “(8) for each of fiscal years 2012 and 2013, an  
 6 amount equal to \$10,507,752,000, of which not  
 7 more than \$8,360,565,000 shall be from the Mass  
 8 Transit Account.”.

9 **TITLE III—EXTENSION OF SUR-**  
 10 **FACE TRANSPORTATION PRO-**  
 11 **GRAMS**

12 **SEC. 301. EXTENSION OF NATIONAL HIGHWAY TRAFFIC**  
 13 **SAFETY ADMINISTRATION HIGHWAY SAFETY**  
 14 **PROGRAMS.**

15 (a) CHAPTER 4 HIGHWAY SAFETY PROGRAMS.—Sec-  
 16 tion 2001(a)(1) of SAFETEA–LU (119 Stat. 1519) is  
 17 amended by striking “and \$117,500,000 for the period be-  
 18 ginning on October 1, 2011, and ending on March 31,  
 19 2012.” and inserting “\$235,000,000 for fiscal year 2012,  
 20 and \$235,000,000 for fiscal year 2013.”.

21 (b) HIGHWAY SAFETY RESEARCH AND DEVELOP-  
 22 MENT.—Section 2001(a)(2) of SAFETEA–LU (119 Stat.  
 23 1519) is amended by striking “and \$54,122,000 for the  
 24 period beginning on October 1, 2011, and ending on

1 March 31, 2012.” and inserting “\$108,244,000 for fiscal  
2 year 2012, and \$108,244,000 for fiscal year 2013.”.

3 (c) OCCUPANT PROTECTION INCENTIVE GRANTS.—

4 (1) EXTENSION OF PROGRAM.—Section 405(a)  
5 of title 23, United States Code, is amended—

6 (A) in paragraph (3) by striking “9” and  
7 inserting “10”; and

8 (B) in paragraph (4)(C) by striking “fifth  
9 through ninth” and inserting “fifth through  
10 tenth”.

11 (2) AUTHORIZATION OF APPROPRIATIONS.—

12 Section 2001(a)(3) of SAFETEA–LU (119 Stat.  
13 1519) is amended by striking “and \$12,500,000 for  
14 the period beginning on October 1, 2011, and ending  
15 on March 31, 2012.” and inserting “\$25,000,000  
16 for fiscal year 2012, and \$25,000,000 for fiscal year  
17 2013.”.

18 (d) SAFETY BELT PERFORMANCE GRANTS.—Section  
19 2001(a)(4) of SAFETEA–LU (119 Stat. 1519) is amend-  
20 ed by striking “and \$24,250,000 for the period beginning  
21 on October 1, 2011, and ending on March 31, 2012.” and  
22 inserting “\$48,500,000 for fiscal year 2012, and  
23 \$48,500,000 for fiscal year 2013.”.

24 (e) STATE TRAFFIC SAFETY INFORMATION SYSTEM  
25 IMPROVEMENTS.—Section 2001(a)(5) of SAFETEA–LU

1 (119 Stat. 1519) is amended by striking “and  
2 \$17,250,000 for the period beginning on October 1, 2011,  
3 and ending on March 31, 2012.” and inserting  
4 “\$34,500,000 for fiscal year 2012, and \$34,500,000 for  
5 fiscal year 2013.”.

6 (f) ALCOHOL-IMPAIRED DRIVING COUNTER-  
7 MEASURES INCENTIVE GRANT PROGRAM.—

8 (1) EXTENSION OF PROGRAM.—Section 410 of  
9 title 23, United States Code, is amended—

10 (A) in subsection (a)(3)(C), by striking  
11 “eleventh” and inserting “12th”; and

12 (B) in subsection (b)(2)(C), by striking  
13 “2012” and inserting “2013”.

14 (2) AUTHORIZATION OF APPROPRIATIONS.—  
15 Section 2001(a)(6) of SAFETEA-LU (119 Stat.  
16 1519) is amended by striking “and \$69,500,000 for  
17 the period beginning on October 1, 2011, and ending  
18 on March 31, 2012.” and inserting “\$139,000,000  
19 for fiscal year 2012, and \$139,000,000 for fiscal  
20 year 2013.”.

21 (g) NATIONAL DRIVER REGISTER.—Section  
22 2001(a)(7) of SAFETEA-LU (119 Stat. 1520) is amend-  
23 ed by striking “and \$2,058,000 for the period beginning  
24 on October 1, 2011, and ending on March 31, 2012.” and



1 inserting “\$4,116,000 for fiscal year 2012, and  
2 \$4,116,000 for fiscal year 2013.”.

3 (h) HIGH VISIBILITY ENFORCEMENT PROGRAM.—

4 (1) EXTENSION OF PROGRAM.—Section 2009(a)  
5 of SAFETEA–LU (23 U.S.C. 402 note) is amended  
6 by striking “2012” and inserting “2013”.

7 (2) AUTHORIZATION OF APPROPRIATIONS.—

8 Section 2001(a)(8) of SAFETEA–LU (119 Stat.  
9 1520) is amended by striking “and \$14,500,000 for  
10 the period beginning on October 1, 2011, and ending  
11 on March 31, 2012.” and inserting “\$29,000,000  
12 for fiscal year 2012, and \$29,000,000 for fiscal year  
13 2013.”.

14 (i) MOTORCYCLIST SAFETY.—

15 (1) EXTENSION OF PROGRAM.—Section  
16 2010(d)(1)(B) of SAFETEA–LU (23 U.S.C. 402  
17 note) is amended by striking “sixth, and seventh”  
18 and inserting “sixth, seventh, and eighth”.

19 (2) AUTHORIZATION OF APPROPRIATIONS.—

20 Section 2001(a)(9) of SAFETEA–LU (119 Stat.  
21 1520) is amended by striking “and \$3,500,000 for  
22 the period beginning on October 1, 2011, and ending  
23 on March 31, 2012.” and inserting “\$7,000,000 for  
24 fiscal year 2012, and \$7,000,000 for fiscal year  
25 2013.”.

1 (j) CHILD SAFETY AND CHILD BOOSTER SEAT SAFE-  
2 TY INCENTIVE GRANTS.—

3 (1) EXTENSION OF PROGRAM.—Section  
4 2011(e)(2) of SAFETEA–LU (23 U.S.C. 405 note)  
5 is amended by striking “sixth, and seventh fiscal  
6 years” and inserting “sixth, seventh, and eighth fis-  
7 cal years”.

8 (2) AUTHORIZATION OF APPROPRIATIONS.—  
9 Section 2001(a)(10) of SAFETEA–LU (119 Stat.  
10 1520) is amended by striking “and \$3,500,000 for  
11 the period beginning on October 1, 2011, and ending  
12 on March 31, 2012.” and inserting “\$7,000,000 for  
13 fiscal year 2012, and \$7,000,000 for fiscal year  
14 2013.”.

15 (k) ADMINISTRATIVE EXPENSES.—Section  
16 2001(a)(11) of SAFETEA–LU (119 Stat. 1520) is  
17 amended by striking “and \$12,664,000 for the period be-  
18 ginning on October 1, 2011, and ending on March 31,  
19 2012.” and inserting “\$25,328,000 for fiscal year 2012,  
20 and \$25,328,000 for fiscal year 2013.”.

21 (l) APPLICABILITY OF TITLE 23.—Section 2001(c) of  
22 SAFETEA–LU (119 Stat. 1520) is amended by striking  
23 “2012” and inserting “2013”.

1 (m) DRUG-IMPAIRED DRIVING ENFORCEMENT.—  
2 Section 2013(f) of SAFETEA-LU (23 U.S.C. 403 note)  
3 is amended by striking “2012” and inserting “2013”.

4 (n) OLDER DRIVER SAFETY; LAW ENFORCEMENT  
5 TRAINING.—Section 2017 of SAFETEA-LU is amend-  
6 ed—

7 (1) in subsection (a)(1) (119 Stat. 1541), by  
8 striking “2012” and inserting “2013”; and

9 (2) in subsection (b)(2) (23 U.S.C. 402 note),  
10 by striking “2012” and inserting “2013”.

11 **SEC. 302. EXTENSION OF FEDERAL MOTOR CARRIER SAFE-**  
12 **TY ADMINISTRATION PROGRAMS.**

13 (a) MOTOR CARRIER SAFETY GRANTS.—Section  
14 31104(a) of title 49, United States Code, is amended—

15 (1) in paragraph (7), by striking “and” at the  
16 end; and

17 (2) by striking paragraph (8) and inserting the  
18 following:

19 “(8) \$212,000,000 for fiscal year 2012; and

20 “(9) \$212,000,000 for fiscal year 2013.”.

21 (b) ADMINISTRATIVE EXPENSES.—Section  
22 31104(i)(1) of title 49, United States Code, is amended—

23 (1) in subparagraph (G), by striking “and” at  
24 the end; and

1           (2) by striking subparagraph (H) and inserting  
2           the following:

3                   “(H) \$244,144,000 for fiscal year 2012;

4                   and

5                   “(I) \$244,144,000 for fiscal year 2013.”.

6           (c) GRANT PROGRAMS.—Section 4101(c) of  
7 SAFETEA-LU (119 Stat. 1715) is amended—

8                   (1) in paragraph (1), by striking “and  
9                   \$15,000,000 for the period beginning on October 1,  
10                  2011, and ending on March 31, 2012.” and insert-  
11                  ing “and \$30,000,000 for each of fiscal years 2012  
12                  and 2013.”;

13                  (2) in paragraph (2), by striking “2011 and  
14                  \$16,000,000 for the period beginning on October 1,  
15                  2011, and ending on March 31, 2012” and inserting  
16                  “2013”;

17                  (3) in paragraph (3), by striking “2011 and  
18                  \$2,500,000 for the period beginning on October 1,  
19                  2011, and ending on March 31, 2012” and inserting  
20                  “2013”;

21                  (4) in paragraph (4), by striking “2011 and  
22                  \$12,500,000 for the period beginning on October 1,  
23                  2011, and ending on March 31, 2012” and inserting  
24                  “2013”; and

1           (5) in paragraph (5), by striking “2011 and  
2           \$1,500,000 for the period beginning on October 1,  
3           2011, and ending on March 31, 2012” and inserting  
4           “2013”.

5           (d)       HIGH-PRIORITY       ACTIVITIES.—Section  
6           31104(k)(2) of title 49, United States Code, is amended  
7           by striking “2011 and \$7,500,000 for the period begin-  
8           ning on October 1, 2011, and ending on March 31, 2012,”  
9           and inserting “2013”.

10          (e)       NEW       ENTRANT       AUDITS.—Section  
11          31144(g)(5)(B) of title 49, United States Code, is amend-  
12          ed by striking “and up to \$14,500,000 for the period be-  
13          ginning on October 1, 2011, and ending on March 31,  
14          2012,”.

15          (f)       OUTREACH AND EDUCATION.—Section 4127(e) of  
16          SAFETEA–LU (119 Stat. 1741) is amended by striking  
17          “fiscal years 2006” and all that follows through “March  
18          31, 2012,” and inserting “fiscal years 2006 through  
19          2013”.

20          (g)       GRANT PROGRAM FOR COMMERCIAL MOTOR VE-  
21          HICLE OPERATORS.—Section 4134(c) of SAFETEA–LU  
22          (119 Stat. 1744) is amended by striking “2011 and  
23          \$500,000 for the period beginning on October 1, 2011,  
24          and ending on March 31, 2012,” and inserting “2013”.

1 (h) MOTOR CARRIER SAFETY ADVISORY COM-  
2 MITTEE.—Section 4144(d) of SAFETEA–LU (119 Stat.  
3 1748) is amended by striking “March 31, 2012” and in-  
4 serting “September 30, 2013”.

5 (i) WORKING GROUP FOR DEVELOPMENT OF PRAC-  
6 TICES AND PROCEDURES TO ENHANCE FEDERAL-STATE  
7 RELATIONS.—Section 4213(d) of SAFETEA–LU (49  
8 U.S.C. 14710 note; 119 Stat. 1759) is amended by strik-  
9 ing “March 31, 2012” and inserting “September 30,  
10 2013”.

11 **SEC. 303. ADDITIONAL PROGRAMS.**

12 (a) HAZARDOUS MATERIALS RESEARCH  
13 PROJECTS.—Section 7131(e) of SAFETEA–LU (119  
14 Stat. 1910) is amended by striking “2011 and \$580,000  
15 for the period beginning on October 1, 2011, and ending  
16 on March 31, 2012,” and inserting “and \$1,160,000 for  
17 each of fiscal years 2012 and 2013”.

18 (b) DINGELL-JOHNSON SPORT FISH RESTORATION  
19 ACT.—Section 4 of the Dingell-Johnson Sport Fish Res-  
20 toration Act (16 U.S.C. 777c) is amended—

21 (1) in subsection (a), by striking “March 31,  
22 2012” and inserting “September 30, 2013,”; and

23 (2) in the first sentence of subsection (b)(1)(A)  
24 by striking “2011 and for the period beginning on  
25 October 1, 2011, and ending on March 31, 2012,”

1 and inserting “2011, and for each of fiscal years  
2 2012 and 2013,”.

3 **TITLE IV—REGULATIONS FROM**  
4 **THE EXECUTIVE IN NEED OF**  
5 **SCRUTINY**

6 **SEC. 401. SHORT TITLE.**

7 This title may be cited as the “Regulations From the  
8 Executive in Need of Scrutiny Act of 2011” or the  
9 “REINS Act”.

10 **SEC. 402. FINDINGS AND PURPOSE.**

11 (a) FINDINGS.—Congress finds the following:

12 (1) Section 1 of article I of the United States  
13 Constitution grants all legislative powers to Con-  
14 gress.

15 (2) Over time, Congress has excessively dele-  
16 gated its constitutional charge while failing to con-  
17 duct appropriate oversight and retain accountability  
18 for the content of the laws it passes.

19 (3) By requiring a vote in Congress, this title  
20 will result in more carefully drafted and detailed leg-  
21 islation, an improved regulatory process, and a legis-  
22 lative branch that is truly accountable to the people  
23 of the United States for the laws imposed upon  
24 them.

1 (b) PURPOSE.—The purpose of this title is to in-  
 2 crease accountability for and transparency in the Federal  
 3 regulatory process.

4 **SEC. 403. CONGRESSIONAL REVIEW OF AGENCY RULE-**  
 5 **MAKING.**

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

8 **“CHAPTER 8—CONGRESSIONAL REVIEW**  
 9 **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.

10 **“§ 801. Congressional review**

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

15 “(i) a copy of the rule;

16 “(ii) a concise general statement relating to the  
 17 rule;

18 “(iii) a classification of the rule as a major or  
 19 nonmajor rule, including an explanation of the clas-  
 20 sification specifically addressing each criteria for a



1 major rule contained within sections 804(2)(A),  
2 804(2)(B), and 804(2)(C);

3 “(iv) a list of any other related regulatory ac-  
4 tions intended to implement the same statutory pro-  
5 vision or regulatory objective as well as the indi-  
6 vidual and aggregate economic effects of those ac-  
7 tions; and

8 “(v) the proposed effective date of the rule.

9 “(B) On the date of the submission of the report  
10 under subparagraph (A), the Federal agency promulgating  
11 the rule shall submit to the Comptroller General and make  
12 available to each House of Congress—

13 “(i) a complete copy of the cost-benefit analysis  
14 of the rule, if any;

15 “(ii) the agency’s actions pursuant to title 5 of  
16 the United States Code, sections 603, 604, 605,  
17 607, and 609;

18 “(iii) the agency’s actions pursuant to title 2 of  
19 the United States Code, sections 1532, 1533, 1534,  
20 and 1535; and

21 “(iv) any other relevant information or require-  
22 ments under any other Act and any relevant Execu-  
23 tive orders.

24 “(C) Upon receipt of a report submitted under sub-  
25 paragraph (A), each House shall provide copies of the re-

1 port to the chairman and ranking member of each stand-  
2 ing committee with jurisdiction under the rules of the  
3 House of Representatives or the Senate to report a bill  
4 to amend the provision of law under which the rule is  
5 issued.

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

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

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

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

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

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

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

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

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

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

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

8           “(C) necessary for national security; or

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

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

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

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

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

23 before the date the Congress is scheduled to adjourn a  
24 session of Congress through the date on which the same  
25 or succeeding Congress first convenes its next session, sec-

1 tions 802 and 803 shall apply to such rule in the suc-  
2 ceeding session of Congress.

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

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

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

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

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

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

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

1 **“§ 802. Congressional approval procedure for major**  
2 **rules**

3 “(a) For purposes of this section, the term ‘joint res-  
4 olution’ means only a joint resolution introduced on or  
5 after the date on which the report referred to in section  
6 801(a)(1)(A) is received by Congress (excluding days ei-  
7 ther House of Congress is adjourned for more than 3 days  
8 during a session of Congress), the matter after the resolv-  
9 ing clause of which is as follows: ‘That Congress approves  
10 the rule submitted by the \_\_\_ \_\_\_ relating to \_\_\_ \_\_\_.’ (The  
11 blank spaces being appropriately filled in).

12 “(1) In the House, the majority leader of the  
13 House of Representatives (or his designee) and the  
14 minority leader of the House of Representatives (or  
15 his designee) shall introduce such joint resolution  
16 described in subsection (a) (by request), within 3  
17 legislative days after Congress receives the report re-  
18 ferred to in section 801(a)(1)(A).

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

25 “(b)(1) A joint resolution described in subsection (a)  
26 shall be referred to the committees in each House of Con-

1 gress with jurisdiction under the rules of the House of  
2 Representatives or the Senate to report a bill to amend  
3 the provision of law under which the rule is issued.

4 “(2) For purposes of this section, the term ‘submis-  
5 sion date’ means the date on which the Congress receives  
6 the report submitted under section 801(a)(1).

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

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

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

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

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



1 Senate, the vote on final passage of the joint resolution  
2 shall occur.

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

7 “(e)(1) In the House of Representatives, if the com-  
8 mittee or committees to which a joint resolution described  
9 in subsection (a) has been referred have not reported it  
10 at the end of 15 legislative days after its introduction,  
11 such committee or committees shall be automatically dis-  
12 charged from further consideration of the resolution and  
13 it shall be placed on the appropriate calendar. A vote on  
14 final passage of the resolution shall be taken on or before  
15 the close of the 15th legislative day after the resolution  
16 is reported by the committee or committees to which it  
17 was referred, or after such committee or committees have  
18 been discharged from further consideration of the resolu-  
19 tion.

20 “(2)(A) A motion in the House of Representatives to  
21 proceed to the consideration of a resolution shall be privi-  
22 leged and not debatable. An amendment to the motion  
23 shall not be in order, nor shall it be in order to move to  
24 reconsider the vote by which the motion is agreed to or  
25 disagreed to.

1       “(B) Debate in the House of Representatives on a  
2 resolution shall be limited to not more than two hours,  
3 which shall be divided equally between those favoring and  
4 those opposing the resolution. A motion to further limit  
5 debate shall not be debatable. No amendment to, or mo-  
6 tion to recommit, the resolution shall be in order. It shall  
7 not be in order to reconsider the vote by which a resolution  
8 is agreed to or disagreed to.

9       “(C) Motions to postpone, made in the House of Rep-  
10 resentatives with respect to the consideration of a resolu-  
11 tion, and motions to proceed to the consideration of other  
12 business, shall be decided without debate.

13       “(D) All appeals from the decisions of the Chair re-  
14 lating to the application of the Rules of the House of Rep-  
15 resentatives to the procedure relating to a resolution shall  
16 be decided without debate.

17       “(f) If, before the passage by one House of a joint  
18 resolution of that House described in subsection (a), that  
19 House receives from the other House a joint resolution  
20 described in subsection (a), then the following procedures  
21 shall apply with respect to a joint resolution described in  
22 subsection (a) of the House receiving the joint resolu-  
23 tion—

1           “(1) the procedure in that House shall be the  
2           same as if no joint resolution had been received from  
3           the other House; but

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

6           “(g) The enactment of a resolution of approval does  
7           not serve as a grant or modification of statutory authority  
8           by Congress for the promulgation of a rule, does not extin-  
9           guish or affect any claim, whether substantive or proce-  
10          dural, against any alleged defect in a rule, and shall not  
11          form part of the record before the court in any judicial  
12          proceeding concerning a rule.

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

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

23                 “(2) with full recognition of the constitutional  
24                 right of either House to change the rules (so far as  
25                 relating to the procedure of that House) at any time,

1 in the same manner, and to the same extent as in  
2 the case of any other rule of that House.

3 **“§ 803. Congressional disapproval procedure for**  
4 **nonmajor rules**

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

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

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

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

24 “(B) the nonmajor rule is published in the Fed-  
25 eral Register, if so published.

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

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

1 shall remain the unfinished business of the Senate until  
2 disposed of.

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

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

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

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

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

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

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

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

16           “(2) With respect to a joint resolution described  
17 in subsection (a) of the House receiving the joint  
18 resolution—

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

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

24 **“§ 804. Definitions**

25           “For purposes of this chapter—

1 “(1) the term ‘Federal agency’—

2 “(A) means any agency as that term is de-  
3 fined in section 551(1); and

4 “(B) includes the Board of Governors of  
5 the Federal Reserve System, the Bureau of  
6 Consumer Financial Protection, the Commodity  
7 Futures Trading Commission, the Federal De-  
8 posit Insurance Corporation, the Federal Hous-  
9 ing Finance Agency, the Financial Stability  
10 Oversight Council, the Office of the Comptroller  
11 of the Currency, the Office of Financial Re-  
12 search, the National Credit Union Administra-  
13 tion, and the Securities and Exchange Commis-  
14 sion;

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

20 “(A) an annual effect on the economy of  
21 \$100,000,000 or more;

22 “(B) a major increase in costs or prices for  
23 consumers, individual industries, Federal,  
24 State, or local government agencies, or geo-  
25 graphic regions; or



1           “(C) significant adverse effects on competi-  
2           tion, employment, investment, productivity, in-  
3           novation, or on the ability of United States-  
4           based enterprises to compete with foreign-based  
5           enterprises in domestic and export markets;

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

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

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

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

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

24           “(D) a rule that is promulgated by the  
25           Board of Governors of the Federal Reserve Sys-

1           tem or the Federal Open Market Committee  
2           under section 10A, 10B, 13, 13A, or 19 of the  
3           Federal Reserve Act, or any of subsections (a)  
4           through (f) of section 14 of that Act.

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

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

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

18          “Notwithstanding section 801—

19                 “(1) any rule that establishes, modifies, opens,  
20                 closes, or conducts a regulatory program for a com-  
21                 mercial, recreational, or subsistence activity related  
22                 to hunting, fishing, or camping; or

23                 “(2) any rule other than a major rule which an  
24                 agency for good cause finds (and incorporates the  
25                 finding and a brief statement of reasons therefore in

1 the rule issued) that notice and public procedure  
 2 thereon are impracticable, unnecessary, or contrary  
 3 to the public interest,  
 4 shall take effect at such time as the Federal agency pro-  
 5 mulgating the rule determines.”.

6 **TITLE V—EPA REGULATORY**  
 7 **RELIEF**

8 **SEC. 501. SHORT TITLE.**

9 This title may be cited as the “EPA Regulatory Re-  
 10 lief Act of 2011”.

11 **SEC. 502. LEGISLATIVE STAY.**

12 (a) ESTABLISHMENT OF STANDARDS.—In place of  
 13 the rules specified in subsection (b), and notwithstanding  
 14 the date by which such rules would otherwise be required  
 15 to be promulgated, the Administrator of the Environ-  
 16 mental Protection Agency (referred to in this title as the  
 17 “Administrator”) shall—

18 (1) propose regulations for industrial, commer-  
 19 cial, and institutional boilers and process heaters,  
 20 and commercial and industrial solid waste inciner-  
 21 ator units, subject to any of the rules specified in  
 22 subsection (b)—

23 (A) establishing maximum achievable con-  
 24 trol technology standards, performance stand-  
 25 ards, and other requirements under sections

1 112 and 129, as applicable, of the Clean Air  
2 Act (42 U.S.C. 7412, 7429); and

3 (B) identifying nonhazardous secondary  
4 materials that, when used as fuels or ingredi-  
5 ents in combustion units of such boilers, proc-  
6 ess heaters, or incinerator units are solid waste  
7 under the Solid Waste Disposal Act (42 U.S.C.  
8 6901 et seq.) (commonly known as the “Re-  
9 source Conservation and Recovery Act”) for  
10 purposes of determining the extent to which  
11 such combustion units are required to meet the  
12 emissions standards under section 112 of the  
13 Clean Air Act (42 U.S.C. 7412) or the emission  
14 standards under section 129 of that Act (42  
15 U.S.C. 7429); and

16 (2) finalize the regulations on the date that is  
17 15 months after the date of enactment of this Act,  
18 or on such later date as may be determined by the  
19 Administrator.

20 (b) STAY OF EARLIER RULES.—The following rules  
21 are of no force or effect, shall be treated as though the  
22 rules had never taken effect, and shall be replaced as de-  
23 scribed in subsection (a):

24 (1) The rule entitled “National Emission  
25 Standards for Hazardous Air Pollutants for Major

1 Sources: Industrial, Commercial, and Institutional  
2 Boilers and Process Heaters” (76 Fed. Reg. 15608)  
3 (March 21, 2011).

4 (2) The rule entitled “National Emission  
5 Standards for Hazardous Air Pollutants for Area  
6 Sources: Industrial, Commercial, and Institutional  
7 Boilers” (76 Fed. Reg. 15554) (March 21, 2011).

8 (3) The rule entitled “Standards of Perform-  
9 ance for New Stationary Sources and Emission  
10 Guidelines for Existing Sources: Commercial and In-  
11 dustrial Solid Waste Incineration Units” (76 Fed.  
12 Reg. 15704) (March 21, 2011).

13 (4) The rule entitled “Identification of Non-  
14 Hazardous Secondary Materials That Are Solid  
15 Waste” (76 Fed. Reg. 15456) (March 21, 2011).

16 (c) INAPPLICABILITY OF CERTAIN PROVISIONS.—  
17 With respect to any standard required by subsection (a)  
18 to be promulgated in regulations under section 112 of the  
19 Clean Air Act (42 U.S.C. 7412), the provisions of sub-  
20 sections (g)(2) and (j) of that section shall not apply prior  
21 to the effective date of the standard specified in those reg-  
22 ulations.

1 **SEC. 503. COMPLIANCE DATES.**

2 (a) ESTABLISHMENT OF COMPLIANCE DATES.—For  
3 each regulation promulgated pursuant to section 702, the  
4 Administrator—

5 (1) shall establish a date for compliance with  
6 standards and requirements under such regulation  
7 that is, notwithstanding any other provision of law,  
8 not earlier than 5 years after the effective date of  
9 the regulation; and

10 (2) in proposing a date for such compliance,  
11 shall take into consideration—

12 (A) the costs of achieving emissions reduc-  
13 tions;

14 (B) any nonair quality health and environ-  
15 mental impact and energy requirements of the  
16 standards and requirements;

17 (C) the feasibility of implementing the  
18 standards and requirements, including the time  
19 needed—

20 (i) to obtain necessary permit approv-  
21 als; and

22 (ii) to procure, install, and test con-  
23 trol equipment;

24 (D) the availability of equipment, sup-  
25 pliers, and labor, given the requirements of the  
26 regulation and other proposed or finalized regu-

1           lations of the Environmental Protection Agency;  
2           and

3           (E) potential net employment impacts.

4           (b) NEW SOURCES.—The date on which the Adminis-  
5 trator proposes a regulation pursuant to section 702(a)(1)  
6 establishing an emission standard under section 112 or  
7 129 of the Clean Air Act (42 U.S.C. 7412, 7429) shall  
8 be treated as the date on which the Administrator first  
9 proposes such a regulation for purposes of applying the  
10 definition of a new source under section 112(a)(4) of that  
11 Act (42 U.S.C. 7412(a)(4)) or the definition of a new solid  
12 waste incineration unit under section 129(g)(2) of that  
13 Act (42 U.S.C. 7429(g)(2)).

14          (c) RULE OF CONSTRUCTION.—Nothing in this title  
15 restricts or otherwise affects paragraph (3)(B) or (4) of  
16 section 112(i) of the Clean Air Act (42 U.S.C. 7412(i)).

17 **SEC. 504. ENERGY RECOVERY AND CONSERVATION.**

18          (a) IN GENERAL.—Notwithstanding any other provi-  
19 sion of law, to ensure the recovery and conservation of  
20 energy consistent with the Solid Waste Disposal Act (42  
21 U.S.C. 6901 et seq.) (commonly known as the “Resource  
22 Conservation and Recovery Act of 1976”), in promul-  
23 gating regulations under section 702(a) that address the  
24 subject matter of the regulations described in paragraphs  
25 (3) and (4) of section 702(b), the Administrator shall—

1           (1) adopt the definitions of the terms “commer-  
2           cial and industrial solid waste incineration unit”,  
3           “commercial and industrial waste”, and “contained  
4           gaseous material” contained in the regulation enti-  
5           tled “Standards of Performance for New Stationary  
6           Sources and Emission Guidelines for Existing  
7           Sources: Commercial and Industrial Solid Waste In-  
8           cineration Units” (65 Fed. Reg. 75338 (December  
9           1, 2000)); and

10           (2) identify nonhazardous secondary material as  
11           not to be solid waste for purposes of the Solid Waste  
12           Disposal Act (42 U.S.C. 6901 et seq.) if—

13                   (A) the material—

14                           (i) does not meet the definition of  
15                           commercial and industrial waste; and

16                           (ii) is on the list published by the Ad-  
17                           ministrator under subsection (b); or

18                   (B) in the case of the material that is a  
19                   gas, the material does not meet the definition of  
20                   contained gaseous material.

21           (b) LIST OF NONHAZARDOUS SECONDARY MATE-  
22           RIALS.—

23                   (1) IN GENERAL.—Not later than 120 days  
24                   after the date of enactment of this Act, the Adminis-  
25                   trator shall publish a list of nonhazardous secondary



1 materials that are not solid waste when combusted  
2 in units designed for energy recovery, including—

3 (A) without limitation, all forms of bio-  
4 mass, including—

5 (i) agricultural and forest-derived bio-  
6 mass;

7 (ii) biomass crops, vines, and orchard  
8 trees;

9 (iii) bagasse and other crop and tree  
10 residues, including—

11 (I) hulls and seeds;

12 (II) spent grains;

13 (III) byproducts of cotton;

14 (IV) corn and peanut production;

15 (V) rice milling and grain eleva-  
16 tor operations;

17 (VI) cellulosic biofuels; and

18 (VII) byproducts of ethanol nat-  
19 ural fermentation processes;

20 (iv) hogged fuel, including wood pal-  
21 lets, sawdust, and wood pellets;

22 (v) wood debris from forests and  
23 urban areas;

24 (vi) resinated wood and other  
25 resinated biomass-derived residuals, includ-

- 1 ing trim, sanderdust, offcuts, and wood-  
2 working residuals;
- 3 (vii) creosote-treated, borate-treated,  
4 sap-stained, and other treated wood;
- 5 (viii) residuals from wastewater treat-  
6 ment by the manufacturing industry, in-  
7 cluding process wastewater with significant  
8 British thermal unit (“Btu”) value;
- 9 (ix) paper and paper or cardboard re-  
10 cycling residuals, including paper-derived  
11 fuel cubes, paper fines, and paper and  
12 cardboard rejects;
- 13 (x) turpentine, turpentine derivatives,  
14 pine tar, rectified methanol, glycerine, lum-  
15 ber kiln condensates, and wood char;
- 16 (xi) tall oil and related soaps;
- 17 (xii) biogases or bioliquids generated  
18 from biomass materials, wastewater oper-  
19 ations, or landfill operations;
- 20 (xiii) processed biomass derived from  
21 construction and demolition debris for the  
22 purpose of fuel production; and
- 23 (xiv) animal manure and bedding ma-  
24 terial;
- 25 (B) solid and emulsified paraffin;

1 (C) petroleum and chemical reaction and  
2 distillation byproducts and residues, alcohol,  
3 ink, and nonhalogenated solvents;

4 (D) tire-derived fuel, including factory  
5 scrap tire and related material;

6 (E) foundry sand processed in thermal rec-  
7 lamation units;

8 (F) coal refuse and coal combustion re-  
9 siduals;

10 (G) shredded cloth and carpet scrap;

11 (H) latex paint water, organic printing  
12 dyes and inks, recovered paint solids, and non-  
13 metallic paint sludges;

14 (I) nonchlorinated plastics;

15 (J) all used oil that qualifies as recycled oil  
16 under section 1004 of the Solid Waste Disposal  
17 Act (42 U.S.C. 6903);

18 (K) process densified fuels that contain  
19 any of the materials described in this para-  
20 graph; and

21 (L) any other specific or general categories  
22 of material that the Administrator determines  
23 the combustion of which is for use as a fuel  
24 pursuant to paragraph (2).

25 (2) ADDITIONS TO THE LIST.—

1 (A) IN GENERAL.—To provide greater reg-  
2 ulatory certainty, the Administrator may, after  
3 public notice and opportunity to comment, add  
4 nonhazardous secondary materials to the list  
5 published under paragraph (1)—

6 (i) as the Administrator determines  
7 necessary; or

8 (ii) based on a petition submitted by  
9 any person.

10 (B) RESPONSE.—Not later than 120 days  
11 after receiving any petition under subparagraph  
12 (A)(ii), the Administrator shall respond to the  
13 petition.

14 (C) REQUIREMENTS.—In making a deter-  
15 mination under this paragraph, the Adminis-  
16 trator may decline to add a material to the list  
17 under paragraph (1) if the Administrator deter-  
18 mines that regulation under section 112 of the  
19 Clean Air Act (42 U.S.C. 7412) would not rea-  
20 sonably protect public health with an ample  
21 margin of safety.

22 **SEC. 505. OTHER PROVISIONS.**

23 (a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN  
24 PRACTICE.—In promulgating rules under section 702(a),  
25 the Administrator shall ensure that emissions standards

1 for existing and new sources established under section 112  
 2 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as  
 3 applicable, can be met under actual operating conditions  
 4 consistently and concurrently with emission standards for  
 5 all other air pollutants regulated by the rule for the source  
 6 category, taking into account variability in actual source  
 7 performance, source design, fuels, inputs, controls, ability  
 8 to measure the pollutant emissions, and operating condi-  
 9 tions.

10 (b) REGULATORY ALTERNATIVES.—For each regula-  
 11 tion promulgated pursuant to section 702(a), from among  
 12 the range of regulatory alternatives authorized under the  
 13 Clean Air Act (42 U.S.C. 7401 et seq.) including work  
 14 practice standards under section 112(h) of that Act (42  
 15 U.S.C. 7412(h)), the Administrator shall impose the least  
 16 burdensome, consistent with the purposes of that Act and  
 17 Executive Order 13563 (76 Fed. Reg. 3821 (January 21,  
 18 2011)).

## 19 **TITLE VI—REGULATORY TIME-** 20 **OUT**

### 21 **SEC. 601. SHORT TITLE.**

22 This title may be cited as the “Regulatory Time-Out  
 23 Act of 2011”.

### 24 **SEC. 602. DEFINITIONS.**

25 In this title—

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

4           (2) the term “covered regulation” means a final  
5 regulation that—

6           (A) directly or indirectly increases costs on  
7 businesses in a manner which will have an ad-  
8 verse effect on job creation, job retention, pro-  
9 ductivity, competitiveness, or the efficient func-  
10 tioning of the economy;

11           (B) is likely to—

12           (i) have an annual effect on the econ-  
13 omy of \$100,000,000 or more;

14           (ii) adversely affect in a material way  
15 the economy, a sector of the economy, pro-  
16 ductivity, competition, jobs, the environ-  
17 ment, public health or safety, or State,  
18 local, or tribal governments or commu-  
19 nities;

20           (iii) create a serious inconsistency or  
21 otherwise interfere with an action taken or  
22 planned by another agency;

23           (iv) materially alter the budgetary im-  
24 pact of entitlements, grants, user fees, or

1 loan programs or the rights and obliga-  
2 tions of recipients thereof; or

3 (v) raise novel legal or policy issues;

4 and

5 (C) did not take effect before September 1,  
6 2011.

7 **SEC. 603. TIME-OUT PERIOD FOR REGULATIONS.**

8 (a) **PRIOR REGULATIONS.**—A covered regulation that  
9 took effect before the date of enactment of this Act shall  
10 be treated as though that regulation never took effect for  
11 the 1-year period beginning on the date of enactment of  
12 this Act.

13 (b) **PROSPECTIVE REGULATIONS.**—A covered regula-  
14 tion that has not taken effect before the date of enactment  
15 of this Act, may not take effect during the 1-year period  
16 beginning on the date of enactment of this Act.

17 **SEC. 604. EXEMPTIONS.**

18 (a) **IN GENERAL.**—The head of an agency may ex-  
19 empt a covered regulation prescribed by that agency from  
20 the application of section 603, if the head of the agency—

21 (1) makes a specific finding that the covered  
22 regulation—

23 (A) is necessary due to an imminent threat  
24 to human health or safety, or any other emer-  
25 gency;

1 (B) is necessary for the enforcement of a  
2 criminal law;

3 (C) has as its principal effect—

4 (i) fostering private sector job cre-  
5 ation and the enhancement of the competi-  
6 tiveness of workers in the United States;

7 (ii) encouraging economic growth; or

8 (iii) repealing, narrowing, or stream-  
9 lining a rule, regulation, or administrative  
10 process, or otherwise reducing regulatory  
11 burdens;

12 (D) pertains to a military or foreign affairs  
13 function of the United States; or

14 (E) is limited to interpreting, imple-  
15 menting, or administering the Internal Revenue  
16 Code of 1986; and

17 (2) submits the finding to Congress and pub-  
18 lishes the finding in the Federal Register.

19 (b) REVIEW.—Not later than 10 days after the date  
20 of enactment of this Act each agency shall submit any cov-  
21 ered regulation that the head of the agency determines  
22 is exempt under this section to the Office of Management  
23 and Budget and Congress.

24 (c) NONDELEGABLE AUTHORITY.—The head of an  
25 agency may not delegate the authority provided under this



1 section to exempt the application of any provision of this  
2 title.

3 **TITLE VII—RESCISSION OF**  
4 **UNSPENT FEDERAL FUNDS**  
5 **TO OFFSET LOSS IN REVE-**  
6 **NUES**

7 **SEC. 701. RESCISSION.**

8 (a) IN GENERAL.—Notwithstanding any other provi-  
9 sion of law, except as provided in subsection (c), of all  
10 appropriated discretionary funds remaining unobligated as  
11 of the date of enactment of this Act, \$40,000,000,000 is  
12 rescinded.

13 (b) IMPLEMENTATION.—

14 (1) IN GENERAL.—The Director of the Office of  
15 Management and Budget shall determine and iden-  
16 tify—

17 (A) to which appropriation accounts the  
18 rescission under subsection (a) shall apply; and

19 (B) the amount of the rescission that shall  
20 apply to each such account.

21 (2) REPORT.—Not later than 60 days after the  
22 date of enactment of this Act, the Director of the  
23 Office of Management and Budget shall submit to  
24 Congress and the Secretary of the Treasury a report

1       that describes the accounts and amounts determined  
2       and identified for rescission under paragraph (1).

3       (c) EXCEPTION.—This section shall not apply to the  
4 unobligated funds of the Department of Defense, the  
5 Corps of Engineers, or the Department of Veterans Af-  
6 fairs.



**Calendar No. 214**

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session  
**S. 1786**

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**A BILL**

To facilitate job creation by reducing regulatory uncertainty, providing for rational evaluation of regulations, providing flexibilities to States and localities, providing for infrastructure spending, and for other purposes.

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NOVEMBER 2, 2011

Read twice and ordered placed on the calendar