112TH CONGRESS
1ST SESSION

# S. 1971

To provide for the establishment of a committee to assess the effects of certain Federal regulatory mandates and to provide for relief from those mandates, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 8, 2011

Mr. INHOFE (for himself and Mr. JOHANNS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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# A BILL

To provide for the establishment of a committee to assess the effects of certain Federal regulatory mandates and to provide for relief from those mandates, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) SHORT TITLE.—This Act may be cited as the "Comprehensive Assessment of Regulations on the Economy Act of 2011".

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

**SEC. 2. DEFINITIONS.**

In this Act:

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

(2) CLEAN AIR INTERSTATE RULE.—The term ''Clean Air Interstate Rule'' means the Clean Air Interstate Rule and the rule establishing Federal Implementation Plans for the Clean Air Interstate Rule, as promulgated and modified by the Administrator (70 Fed. Reg. 25162 (May 12, 2005), 71 Fed. Reg. 25288 (April 28, 2006), 72 Fed. Reg. 55657 (October 1, 2007), 72 Fed. Reg. 59190 (Oc-

tober 19, 2007), 72 Fed. Reg. 62338 (November 2, 2007), 74 Fed. Reg. 56721 (November 3, 2009)).

(3) COMMITTEE.—The term ''Committee'' means the Cumulative Regulatory Assessment Committee established by section 101(a).

(4) FEDERAL REGULATORY MANDATE.—The term ''Federal regulatory mandate'' means any regulation, rule, requirement, or interpretative guidance that—

(A) is promulgated or issued (or is expected to be initiated) by the Administrator or a State or local government during the period beginning on January 1, 2010, and ending on January 1, 2020;

(B) applies to 1 or more impacted units; and

(C) implements any provision or requirement relating to—

(i) interstate or international transport of air pollution under section 110(a)(2)(D), 115, or 126(b) of the Clean Air Act (42 U.S.C. 7410(a)(2)(D), 7415, 7426(b)) with respect to any national ambient air quality standard, including—

(I) any standard that has been promulgated or proposed before July 1, 2011; and

(II) any new or revised standard for ozone or fine particulate matter that, as of the date of enactment of this Act, is currently under review or development by the Administrator; and

(ii) the attainment, or maintenance of attainment, of any national ambient air quality standard, including—

(I) any new or revised standard for ozone or fine particulate matter that, as of the date of enactment of this Act, is currently under review or development by the Administrator; and

(II) any other standard that has been promulgated or proposed before July 1, 2011;

(iii) new source performance standards under section 111 of the Clean Air Act (42 U.S.C. 7411), including any standards under subsection (d) of that section;

(iv) hazardous air pollutants under section 112 of the Clean Air Act (42 U.S.C. 7412);

(v) greenhouse gas emissions under titles I, II, and V of the Clean Air Act (42 U.S.C. 7401 et seq.), including the requirements for—

(I) new source performance standards under section 111 of the Clean Air Act (42 U.S.C. 7411), including any standards under subsection (d) of that section; and

(II) preconstruction review permits under section 165 of the Clean Air Act (42 U.S.C. 7475);

(vi) cooling water intake structures under section 316(b) of the Clean Water Act (33 U.S.C. 1326(b));

(vii) effluent guidelines for regulating the discharge of pollutants under section 304 of the Clean Water Act (33 U.S.C. 1314);

(viii) the handling and disposal of coal combustion residuals under subtitle C or D

of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.);

(ix) the regulation of fuels under title II of the Clean Air Act (42 U.S.C. 7521 et seq.);

(x) regional haze or reasonably attributable visibility impairment under section 169A or section 169B of the Clean Air Act (42 U.S.C. 7491, 7492); and

(xi) any other environmental regulations expected to have a significant impact on the electric power sector, the petroleum refining sector, the petrochemical production sector, pipeline facilities regulated by the Department of Transportation or the Environmental Protection Agency, exploration, production, or transportation of oil and natural gas, or any other manufacturing sector.

(5) IMPACTED UNIT.—The term ''impacted unit'' means—

(A) any electric generating unit that sells electricity into the grid;

(B) any industrial, commercial, or institutional boiler or process heater;

(C) any petroleum refining facility that produces gasoline, heating oil, diesel fuel, jet fuel, kerosene, or petrochemical feedstocks;

(D) any petrochemical facility;

(E) any hydrocarbon exploration, extraction, manufacturing, production, or transportation facility; or

(F) any biofuel facility.

# TITLE I—REGULATORY ASSESSMENT

## SEC. 101. CUMULATIVE REGULATORY ASSESSMENT COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department of Commerce a Committee, to be known as the ''Cumulative Regulatory Assessment Committee''.

(b) COMPOSITION OF COMMITTEE.—The Committee shall consist of the following officials (or designees of the officials):

(1) The Secretary of Agriculture.

(2) The Secretary of Commerce.

(3) The Secretary of Defense.

(4) The Chairperson of the Council of Economic Advisers.

(5) The Secretary of Energy.

(6) The Administrator.

(7) The Chairperson of the Federal Energy Regulatory Commission.

(8) The Secretary of Labor.

(9) The Administrator of the Office of Information and Regulatory Affairs.

(10) The President and Chief Executive Officer of the North American Electric Reliability Corporation.

(11) The Chief Counsel for Advocacy of the Small Business Administration.

(c) LEADERSHIP; OPERATIONS.—The Secretary of Commerce shall—

(1) serve as the Chairperson of the Committee; and

(2) be responsible for the executive and administrative operation of the Committee.

(d) IDENTIFICATION OF FEDERAL REGULATORY MANDATES.—Not later than 30 days after the date of enactment of this Act, the Administrator shall provide to the Committee a list of Federal regulatory mandates.

(e) DUTIES.—

(1) ASSESSMENT.—

(A) IN GENERAL.—The Committee shall perform an assessment of the cumulative energy and economic impacts of the Federal regulatory

mandates in accordance with this subsection, including direct, indirect, quantifiable, and qualitative effects on—

(i) employment, including job levels in each segment of the economy and each region of the United States, including coal-producing regions;

(ii) economic development, including production levels and labor demands in manufacturing, commercial, and other sectors of the economy;

(iii) the electric power sector, including potential impacts on electric reliability, energy security, and retail electricity rates;

(iv) the domestic refining and petrochemical sector, including potential impacts on supply, international competitiveness, wholesale and retail transportation fuels, and heating oil and petrochemical prices;

(v) State and local governments, including potential impacts on governmental operations and local communities from any reductions in State and local tax revenues;

(vi) small businesses (as defined in section 601 of title 5, United States Code), including economic and regulatory impacts that could force the shutdown or limit the growth of small businesses;

(vii) agriculture, including economic and regulatory impacts that could force the shutdown, or limit growth or productive capacity, of the agricultural industry in the United States, including the domestic fertilizer manufacturing industry; and

(viii) energy-intensive, trade-exposed industry (as defined in North American Industry Classification System codes 31, 32, and 33) (including the beneficiation or processing (including agglomeration) of metal ores (including iron and copper ores), soda ash, or phosphate, petroleum refining, and petrochemicals production), including economic and regulatory impacts that could force the shutdown, or limit growth of productive capacity, of the United States manufacturing industry.

(B) COMPREHENSIVE ANALYSIS.—The assessment shall include a comprehensive anal-

ysis, for the period beginning on January 1, 2012, and ending on December 31, 2025, of the following matters:

(i) The impacted units that would likely retire due to the cumulative compliance costs of the Federal regulatory mandates.

(ii) The amount by which average retail electricity prices are forecasted to increase above inflation as a result of—

(I) the cumulative compliance costs of the Federal regulatory mandates;

(II) the retirement of electric generating units that are impacted units described in clause (i); and

(III) other direct and indirect impacts that are expected to result from the cumulative compliance obligations of the Federal regulatory mandates.

(iii) The amount by which average retail transportation fuel and heating oil prices are forecasted to increase above inflation as a result of—

(I) the cumulative compliance costs of the Federal regulatory mandates;

(II) the retirement or closure of domestic refineries that are impacted units described in clause (i);

(III) the likely foreign-sourced replacement for the transportation fuels and heating oil supplies loss caused by the retirements or closures identified under subclause (II); and

(IV) other direct and indirect impacts that are expected to result from the cumulative compliance obligations of the Federal regulatory mandates.

(iv) The amount by which average petrochemical prices are forecasted to increase above inflation as a result of—

(I) the cumulative compliance costs of the Federal regulatory mandates;

(II) the retirement or closure of domestic petrochemical facilities that are impacted units described in clause (i);

(III) the likely foreign-sourced replacement for the petrochemical supplies loss caused by the retirements or closures identified under subclause (II); and

(IV) other direct and indirect impacts that are expected to result from the cumulative compliance obligations of the Federal regulatory mandates.

(v) The direct and indirect adverse impacts on the economies of local communities that are projected to result from the retirement of impacted units described in clause (i) and increased retail electricity, transportation fuels, heating oil, and petrochemical prices that are forecasted under clause (ii), including—

(I) loss of jobs, including jobs that would be lost that relate directly or indirectly to coal production or petroleum refining;

(II) reduction in State and local tax revenues;

(III) harm to small businesses;

(IV) harm to consumers;

(V) reduction in—

(aa) the production and use of coal; and

(bb) the domestic production of transportation fuels, heating oil, and petrochemicals in the United States; and

(VI) other resulting adverse economic or energy impacts.

(vi) The extent to which the direct and indirect adverse economic impacts identified under clause (v) can be mitigated through the creation of additional jobs and new economic growth as a result of renewable energy projects, energy efficiency measures, and other such energy construction projects that are projected to be undertaken in order to meet future energy demands.

(vii) The cumulative effects of Federal regulatory mandates on the ability of industries and businesses in the United States to compete with industries and businesses in other countries, with respect to

competitiveness in both domestic and foreign markets.

(viii) The regions of the United States that are forecasted to be—

(I) most affected from the direct and indirect adverse impacts from the retirement of impacted units and increased retail electricity, transportation fuels, heating oil, and petrochemicals price, as identified under clause (v); and

(II) least affected from such adverse impacts due to the creation of new jobs and economic growth that are expected to result directly and indirectly from the energy construction projects, as identified under clause (vi).

(ix) The cumulative effects of the Federal regulatory mandates on the electric power sector, including—

(I) adverse impacts on electric reliability that are expected to result from the retirement of electric generating units identified under clause (i);

(II) the geographical distribution of the projected adverse electric reliability impacts identified in subclause (I), according to the regions established by North American Electric Reliability Corporation; and

(III) an assessment of whether current plans to expand electricity generation and transmission capabilities for each particular region can be optimized to mitigate those projected adverse reliability impacts.

(x) Federal, State, and local policies that have been or will be implemented to foster a transition in energy infrastructure in the United States, including those policies that promote fuel diversity, affordable and reliable electricity, and energy security.

(2) CONSULTATION WITH STATE AND LOCAL GOVERNMENTS.—The Committee shall consult with representatives of State and local governments—

(A) to identify potential adverse cumulative impacts of the Federal regulatory mandates that have unique or significant repercussions

for each particular region of the United States; and

(B) to investigate opportunities and strategies for mitigating the adverse impacts and repercussions identified under subparagraph (A).

(3) METHODOLOGY.—The Committee shall—

(A) use the best available information and peer-reviewed economic models in performing the cumulative regulatory impact assessment under this subsection; and

(B) seek public comment on the cost, energy, and other modeling assumptions used in performing the assessment.

(4) PUBLIC NOTICE AND COMMENT.—The Committee shall provide public notice and the opportunity for comment on a draft cumulative regulatory impact assessment to be prepared under this subsection.

(5) REPORT TO CONGRESS AND STATES.—Not later than August 1, 2012, the Committee shall submit to Congress and the Governor of each State a detailed report of the cumulative assessment performed under this subsection.

**SEC. 102. ADDITIONAL PROVISIONS RELATING TO CERTAIN RULES.**

(a) CROSS-STATE AIR POLLUTION RULE/TRANSPORT RULE.—

(1) EARLIER RULES.—The rule entitled ''Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals'' (76 Fed. Reg. 48208 (August 8, 2011)), and any successor or substantially similar rule, shall be—

(A) of no force or effect; and

(B) treated as though the rule had never taken effect.

(2) CONTINUED APPLICABILITY OF CLEAN AIR INTERSTATE RULE.—In place of any rule described in paragraph (1), the Administrator shall continue to implement the Clean Air Interstate Rule.

(3) ADDITIONAL RULEMAKINGS.—

(A) ISSUANCE OF NEW RULES.—The Administrator shall—

(i) not issue any proposed or final rule under section 110(a)(2)(D)(i)(I) or section 126 of the Clean Air Act (42 U.S.C. 7410(a)(2)(D)(i)(I), 7426) relating to national ambient air quality standards for ozone or particulate matter (including any

modification of the Clean Air Interstate Rule) before the date that is 3 years after the date on which the Committee submits the final report under section 101(e)(5); and

(ii) in issuing any rule described in clause (i)—

(I) base the rule on actual monitored (and not modeled) data; and

(II) notwithstanding section 110(a)(2)(D)(i)(I) of the Clean Air Act (42 U.S.C. 7410(a)(2)(D)(i)(I)), allow the trading of emission allowances among entities covered by the rule irrespective of the States in which the entities are located.

(B) IMPLEMENTATION SCHEDULE.—In promulgating any final rule described in subparagraph (A)(i), the Administrator shall establish a date for State implementation of the standards established by the final rule that is not earlier than 3 years after the date of publication of the final rule.

(b) STEAM GENERATING UNIT RULES.—

(1) EARLIER RULES.—

(A) IN GENERAL.—The proposed rule entitled "National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units" (76 Fed. Reg. 24976 (May 3, 2011)), and any final rule that is based on that proposed rule and promulgated prior to the date of enactment of this Act, shall be—

(i) of no force and effect; and

(ii) treated as though the proposed or final rule had never been issued or promulgated.

(B) ANALYSES.—In conducting analyses under section 101(e)(1)(B), the Committee shall analyze the rules described in subparagraph (A) (including any successor or substantially similar rules) as if subparagraph (A) did not apply to the rules.

(2) PROMULGATION OF FINAL RULES.—In place of the rules described in paragraph (1), the Administrator shall promulgate—

(A) regulations establishing national emission standards for coal-and oil-fired electric utility steam generating units under section 112 of the Clean Air Act (42 U.S.C. 7412) with respect to each hazardous air pollutant for which the Administrator determines that regulations are appropriate and necessary pursuant to section 112(n)(1)(A) of that Act (42 U.S.C. 7412(n)(1)(A));

(B) regulations establishing standards of performance for fossil-fuel-fired electric utility, industrial-commercial-institutional, and small industrial-commercial-institutional steam generating units under section 111 of the Clean Air Act (42 U.S.C. 7411); and

(C) the final regulations required by subparagraphs (A) and (B)—

(i) after issuing proposed regulations under those subparagraphs;

(ii) after consideration of the final report submitted under section 101(e)(5); and

(iii) not earlier than the date that is 1 year after the date on which the Committee submits that report to Congress (or

on such later date as may be determined by the Administrator).

(3) COMPLIANCE PROVISIONS.—

(A) ESTABLISHMENT OF COMPLIANCE DATES.—In promulgating the regulations under paragraph (2), the Administrator shall—

(i) establish a date for compliance with the standards and requirements under the regulations that is not earlier than 5 years after the effective date of the regulations; and

(ii) in establishing a date for that compliance, take into consideration—

(I) the costs of achieving emission reductions;

(II) any non-air quality health and environmental impact and energy requirements of the standards and requirements;

(III) the feasibility of implementing the standards and requirements, including the time needed—

(aa) to obtain necessary permit approvals; and

(bb) to procure, install, and test control equipment;

(IV) the availability of equipment, suppliers, and labor, given the requirements of the regulations and other proposed or finalized regulations; and

(V) potential net employment impacts.

(B) NEW SOURCES.—With respect to the regulations promulgated pursuant to paragraph (2)—

(i) the date on which the Administrator proposes a regulation pursuant to paragraph (2)(A) establishing an emission standard under section 112 of the Clean Air Act (42 U.S.C. 7412) shall be treated as the date on which the Administrator first proposes such a regulation for purposes of applying the definition of a new source under section 112(a)(4) of that Act (42 U.S.C. 7412(a)(4));

(ii) the date on which the Administrator proposes a regulation pursuant to paragraph (2)(B) establishing a standard

of performance under section 111 of the Clean Air Act (42 U.S.C. 7411) shall be treated as the date on which the Administrator proposes such a regulation for purposes of applying the definition of a new source under section 111(a)(2) of that Act (42 U.S.C. 7411(a)(2));

(iii) for purposes of any emission standard or limitation applicable to electric utility steam generating units, the term ''new source'' shall mean a stationary source for which a preconstruction permit or other preconstruction approval required under the Clean Air Act (42 U.S.C. 7401 et seq.) has been issued after the effective date of the emission standard or limitation; and

(iv) for purposes of clause (iii), the date of issuance of a preconstruction permit or other preconstruction approval is deemed to be the date on which the permit or approval is issued to the applicant irrespective of any administrative or judicial review occurring after that date.

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

(4) OTHER PROVISIONS.—

(A) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—

(i) IN GENERAL.—The regulations promulgated pursuant to paragraph (2)(A) shall apply to section 112(d)(3) of the Clean Air Act (42 U.S.C. 7412(d)(3)) in accordance with clauses (ii) and (iii).

(ii) NEW SOURCES.—With respect to new sources—

(I) the Administrator shall identify the best-controlled similar source for each source category or subcategory; and

(II) the best-controlled similar source for a category or subcategory shall be the single source that is determined by the Administrator to be the best controlled, in the aggregate, for all of the hazardous air pollutants for which the Administrator intends

to issue standards for the source category or subcategory, under actual operating conditions, taking into account the variability in actual source performance, source design, fuels, controls, ability to measure pollutant emissions, and operating conditions.

(iii) EXISTING SOURCES.—With respect to existing sources—

(I) the Administrator shall identify 1 group of sources that constitutes the best-performing 12 percent of existing sources for each source category or subcategory; and

(II) the group constituting the best-performing 12 percent of existing sources for a category or subcategory shall be the single group that is determined by the Administrator to be the best performing, in the aggregate, for all of the hazardous air pollutants for which the Administrator intends to issue standards for the source category or subcategory, under actual operating conditions, taking into account

the variability in actual source performance, source design, fuels, controls, ability to measure pollutant emissions, and operating conditions.

(B) REGULATORY ALTERNATIVES.—For the regulations promulgated pursuant to paragraph (2), from among the range of regulatory alternatives authorized under the Clean Air Act (42 U.S.C. 7401 et seq.), including work practice standards under section 112(h) of that Act (42 U.S.C. 7412(h)), the Administrator shall impose the least burdensome, consistent with the purposes of that Act and Executive Order No. 13563 (76 Fed. Reg. 3821 (January 21, 2011)).

**SEC. 103. CONSIDERATION OF FEASIBILITY AND COST IN ESTABLISHING NATIONAL AMBIENT AIR QUALITY STANDARDS.**

In establishing any national primary or secondary ambient air quality standard under section 109 of the Clean Air Act (42 U.S.C. 7409), the Administrator shall take into consideration feasibility and cost.

# TITLE II—REGULATORY RELIEF

**SEC. 201. LEGISLATIVE STAY.**

(a) RULES RELATING TO CEMENT MANUFACTURING, BOILERS, PROCESS HEATERS, AND SOLID WASTE INCINERATORS.—

(1) ESTABLISHMENT OF STANDARDS.—In lieu of the rules specified in paragraph (2)(B), and notwithstanding the date by which those rules would otherwise be required to be promulgated, the Administrator shall—

(A) propose regulations for the Portland cement manufacturing industry and Portland cement plants, and for industrial, commercial, and institutional boilers and process heaters, and commercial and industrial solid waste incinerator units that are subject to any of the rules specified in paragraph (2)(B), that—

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

(ii) identify nonhazardous secondary materials that, when used as fuels in com-

bustion units of that industry and those plants, boilers, heaters, and units, qualify as solid waste under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.) for purposes of determining the extent to which the combustion units are required to meet the emission standards under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429); and

(B) promulgate final versions of those regulations by not later than—

(i) the date that is 15 months after the date of enactment of this Act; or

(ii) such later date as may be determined by the Administrator.

(2) STAY OF CERTAIN RULES.—

(A) IN GENERAL.—The final rules described in subparagraph (B) shall be—

(i) of no force or effect;

(ii) treated as though the rule had never taken effect; and

(iii) replaced in accordance with paragraph (1).

(B) DESCRIPTION OF RULES.—The rules referred to in subparagraph (A) are—

(i) the final rule entitled ''National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants'' (75 Fed. Reg. 54970 (September 9, 2010));

(ii) the final rule entitled ''Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units'' (76 Fed. Reg. 15704 (March 21, 2011));

(iii) the final rule entitled ''Identification of Non-Hazardous Secondary Materials That Are Solid Waste'' (76 Fed. Reg. 15456 (March 21, 2011));

(iv) the final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters'' (76 Fed. Reg. 15608 (March 21, 2011));

(v) the final rule entitled ''National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial,

Commercial, and Institutional Boilers'' (76 Fed. Reg. 15554 (March 21, 2011));

(vi) the final rule entitled ''Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units'' (76 Fed. Reg. 15704 (March 21, 2011)); and

(vii) the final rule entitled ''Identification of Non-Hazardous Secondary Materials That Are Solid Waste'' (76 Fed. Reg. 15456 (March 21, 2011)).

(b) INAPPLICABILITY OF CERTAIN PROVISIONS.—With respect to any standard required by subsection (a)(1) to be promulgated in regulations under section 112 of the Clean Air Act (42 U.S.C. 7412), the provisions of subsections (g)(2) and (j) of that section shall not apply prior to the effective date of the standard specified in those regulations.

**SEC. 202. COMPLIANCE DATES.**

(a) ESTABLISHMENT OF COMPLIANCE DATES.—For each regulation promulgated pursuant to section 201, the Administrator—

(1) shall establish a date for compliance with standards and requirements under the regulation

that is, notwithstanding any other provision of law, not earlier than 5 years after the effective date of the regulation; and

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

(A) the costs of achieving emission reductions;

(B) any non-air quality health and environmental impact and energy requirements of the standards and requirements;

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

(i) to obtain necessary permit approvals; and

(ii) to procure, install, and test control equipment;

(D) the availability of equipment, suppliers, and labor, given the requirements of the regulation and other proposed or finalized regulations of the Administrator; and

(E) potential net employment impacts.

(b) NEW SOURCES.—The date on which the Administrator proposes a regulation pursuant to section 201 establishing an emission standard under section 112 or 129

of the Clean Air Act (42 U.S.C. 7412, 7429) shall be treated as the date on which the Administrator first proposes such a regulation for purposes of applying—

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

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

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

**SEC. 203. ENERGY RECOVERY AND CONSERVATION.**

Notwithstanding any other provision of law, and to ensure the recovery and conservation of energy consistent with the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), in promulgating regulations under section 201 addressing the subject matter of the rules specified in paragraph (2) of each of those subsections, the Administrator shall—

(1) adopt the definitions of the terms ''commercial and industrial solid waste incineration unit'', ''commercial and industrial waste'', and ''contained gaseous material'' in the rule entitled ''Standards for Performance of New Stationary Sources and

Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units'' (65 Fed. Reg. 75338 (December 1, 2000)); and

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

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

(B) if the material is a gas, the material meets that definition of contained gaseous material.

**SEC. 204. OTHER PROVISIONS.**

(a) ESTABLISHMENT OF STANDARDS ACHIEVABLE IN PRACTICE.—In promulgating regulations under section 201, the Administrator shall ensure, to the maximum extent practicable, that emission standards for existing and new sources established under section 112 or 129 of the Clean Air Act (42 U.S.C. 7412, 7429), as applicable, can be met under actual operating conditions consistently and concurrently with emission standards for all other air pollutants covered by regulations applicable to the source category, taking into account—

(1) variability in actual source performance;

(2) source design;

(3) fuels;

(4) inputs;

(5) controls;

(6) ability to measure the pollutant emissions; and

(7) operating conditions.

(b) REGULATORY ALTERNATIVES.—For each regulation promulgated under section 201, from among the range of regulatory alternatives authorized under the Clean Air Act (42 U.S.C. 7401 et seq.), including work practice standards under section 112(h) of that Act (42 U.S.C. 7412(h)), the Administrator shall impose the least burdensome, consistent with the purposes of that Act and Executive Order 13563 (76 Fed. Reg. 3821 (January 21, 2011)).

# TITLE III—COAL RESIDUALS REUSE AND MANAGEMENT

**SEC. 301. SHORT TITLE.**

This title may be cited as the ''Coal Residuals Reuse and Management Act''.

**SEC. 302. AMENDMENT TO SUBTITLE D OF THE SOLID WASTE DISPOSAL ACT.**

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

**"SEC. 4011. MANAGEMENT AND DISPOSAL OF COAL COMBUSTION RESIDUALS.**

"(a) STATE PERMIT PROGRAMS FOR COAL COMBUSTION RESIDUALS.—Each State may adopt and implement a coal combustion residuals permit program.

"(b) STATE ACTIONS.—

"(1) NOTIFICATION.—Not later than 6 months after the date of enactment of this section (except as provided by the deadline identified under subsection (d)(2)(B)), the Governor of each State shall notify the Administrator, in writing, whether such State will adopt and implement a coal combustion residuals permit program.

"(2) CERTIFICATION.—

"(A) IN GENERAL.—Not later than 36 months after the date of enactment of this section (except as provided in subsections (f)(1)(A) and (f)(1)(C)), in the case of a State that has notified the Administrator that it will implement a coal combustion residuals permit program, the head of the lead State agency responsible for implementing the coal combustion residuals permit program shall submit to the Administrator a certification that such coal combustion residuals permit program meets the specifications described in subsection (c)(1).

"(B) CONTENTS.—A certification submitted under this paragraph shall include—

"(i) a letter identifying the lead State agency responsible for implementing the coal combustion residuals permit program, signed by the head of such agency;

"(ii) identification of any other State agencies involved with the implementation of the coal combustion residuals permit program;

"(iii) a narrative description that provides an explanation of how the State will ensure that the coal combustion residuals permit program meets the requirements of this section, including a description of the State's—

"(I) process to inspect or otherwise determine compliance with such permit program;

"(II) process to enforce the requirements of such permit program; and

"(III) public participation process for the promulgation, amendment, or repeal of regulations for, and the

issuance of permits under, such permit program;

"(iv) a legal certification that the State has, at the time of certification, fully effective statutes or regulations necessary to implement a coal combustion residuals permit program that meets the specifications described in subsection (c)(1); and

"(v) copies of State statutes and regulations described in clause (iv).

"(3) MAINTENANCE OF 4005(c) OR 3006 PROGRAM.—In order to adopt or implement a coal combustion residuals permit program under this section (including pursuant to subsection (f)), the State agency responsible for implementing a coal combustion residuals permit program in a State shall maintain an approved program under section 4005(c) or an authorized program under section 3006.

"(c) PERMIT PROGRAM SPECIFICATIONS.—

"(1) MINIMUM REQUIREMENTS.—The specifications described in this subsection for a coal combustion residuals permit program are as follows:

"(A) The revised criteria described in paragraph (2) shall apply to a coal combustion

residuals permit program, except as provided in paragraph (3).

"(B) Each structure shall be, in accordance with generally accepted engineering standards for the structural integrity of such structures, designed, constructed, and maintained to provide for containment of the maximum volumes of coal combustion residuals appropriate for the structure. If a structure is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be deficient, the head of such agency has authority to require action to correct the deficiency according to a schedule determined by such agency. If the identified deficiency is not corrected according to such schedule, the head of such agency has authority to require that the structure close in accordance with subsection (h).

"(C) The coal combustion residuals permit program shall apply the revised criteria promulgated pursuant to section 4010(c) for location, design, groundwater monitoring, corrective action, financial assurance, closure, and post-closure described in paragraph (2) and the speci-

fications described in this paragraph to surface impoundments.

"(D) If a structure that is classified as posing a high hazard potential pursuant to the guidelines published by the Federal Emergency Management Agency entitled 'Federal Guidelines for Dam Safety: Hazard Potential Classification System for Dams' (FEMA Publication Number 333) is determined by the head of the agency responsible for implementing the coal combustion residuals permit program to be deficient with respect to the structural integrity requirement in subparagraph (B), the head of such agency has authority to require action to correct the deficiency according to a schedule determined by such agency. If the identified deficiency is not corrected according to such schedule, the head of such agency has authority to require that the structure close in accordance with subsection (h).

"(E) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to inspect structures and implement and enforce such permit program.

"(F) In the case of a coal combustion residuals permit program implemented by a State, the State has the authority to address wind dispersal of dust from coal combustion residuals by requiring dust control measures, as determined appropriate by the head of the lead State agency responsible for implementing the coal combustion residuals permit program.

"(2) REVISED CRITERIA.—The revised criteria described in this paragraph are—

"(A) the revised criteria for design, groundwater monitoring, corrective action, closure, and post-closure, for structures, including—

"(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding design requirements described in section 258.40 of title 40, Code of Federal Regulations; and

"(ii) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria regarding groundwater monitoring

and corrective action requirements described in subpart E of part 258 of title 40, Code of Federal Regulations, except that, for the purposes of this paragraph, such revised criteria shall also include—

"(I) for the purposes of detection monitoring, the constituents boron, chloride, conductivity, fluoride, mercury, pH, sulfate, sulfide, and total dissolved solids; and

"(II) for the purposes of assessment monitoring, the constituents aluminum, boron, chloride, fluoride, iron, manganese, molybdenum, pH, sulfate, and total dissolved solids;

"(B) the revised criteria for location restrictions described in—

"(i) for new structures, and lateral expansions of existing structures, that first receive coal combustion residuals after the date of enactment of this section, sections 258.11 through 258.15 of title 40, Code of Federal Regulations; and

"(ii) for existing structures that receive coal combustion residuals after the

date of enactment of this section, sections 258.11 and 258.15 of title 40, Code of Federal Regulations;

''(C) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for air quality described in section 258.24 of title 40, Code of Federal Regulations;

''(D) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for financial assurance described in subpart G of part 258 of title 40, Code of Federal Regulations;

''(E) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for surface water described in section 258.27 of title 40, Code of Federal Regulations;

''(F) for all structures that receive coal combustion residuals after the date of enactment of this section, the revised criteria for recordkeeping described in section 258.29 of title 40, Code of Federal Regulations;

"(G) for landfills and other land-based units, other than surface impoundments, that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-on and run-off control systems described in section 258.26 of title 40, Code of Federal Regulations; and

"(H) for surface impoundments that receive coal combustion residuals after the date of enactment of this section, the revised criteria for run-off control systems described in section 258.26(a)(2) of title 40, Code of Federal Regulations.

"(3) APPLICABILITY OF CERTAIN REQUIREMENTS.—A State may determine that one or more of the requirements of the revised criteria described in paragraph (2) is not needed for the management of coal combustion residuals in that State, and may decline to apply such requirement as part of its coal combustion residuals permit program. If a State declines to apply a requirement under this paragraph, the State shall include in the certification under subsection (b)(2) a description of such requirement and the reasons such requirement is not needed in the State. If the Administrator, taking into account only

the revised criteria that the State determines to be needed under this section, determines that a State determination under this paragraph does not accurately reflect the needs for the management of coal combustion residuals in the State, the Administrator may treat such State determination as a deficiency under subsection (d).

"(d) WRITTEN NOTICE AND OPPORTUNITY TO REMEDY.—

"(1) IN GENERAL.—The Administrator shall provide to a State written notice and an opportunity to remedy deficiencies in accordance with paragraph (2) if at any time the State—

"(A) does not satisfy the notification requirement under subsection (b)(1);

"(B) has not submitted a certification under subsection (b)(2);

"(C) does not satisfy the maintenance requirement under subsection (b)(3); or

"(D) is not implementing a coal combustion residuals permit program that meets the specifications described in subsection (c)(1).

"(2) CONTENTS OF NOTICE; DEADLINE FOR RESPONSE.—A notice provided under this subsection shall—

"(A) include findings of the Administrator detailing any applicable deficiencies in—

"(i) compliance by the State with the notification requirement under subsection (b)(1);

"(ii) compliance by the State with the certification requirement under subsection (b)(2);

"(iii) compliance by the State with the maintenance requirement under subsection (b)(3); and

"(iv) the State coal combustion residuals permit program in meeting the specifications described in subsection (c)(1); and

"(B) identify, in collaboration with the State, a reasonable deadline, which shall be not sooner than 6 months after the State receives the notice, by which the State shall remedy the deficiencies detailed under subparagraph (A).

"(e) IMPLEMENTATION BY ADMINISTRATOR.—

"(1) IN GENERAL.—The Administrator shall implement a coal combustion residuals permit program for a State only in the following circumstances:

"(A) If the Governor of such State notifies the Administrator under subsection (b)(1) that such State will not adopt and implement such a permit program.

"(B) If such State has received a notice under subsection (d) and, after any review brought by the State under section 7006, fails, by the deadline identified in such notice under subsection (d)(2)(B), to remedy the deficiencies detailed in such notice under subsection (d)(2)(A).

"(C) If such State informs the Administrator, in writing, that such State will no longer implement such a permit program.

"(2) REQUIREMENTS.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), such permit program shall consist of the specifications described in subsection (c)(1).

"(3) ENFORCEMENT.—If the Administrator implements a coal combustion residuals permit program for a State under paragraph (1), the authorities referred to in section 4005(c)(2)(A) shall apply with respect to coal combustion residuals and structures and the Administrator may use such authori-

ties to inspect, gather information, and enforce the requirements of this section in the State.

"(f) STATE CONTROL AFTER IMPLEMENTATION BY ADMINISTRATOR.—

"(1) STATE CONTROL.—

"(A) NEW ADOPTION AND IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(A), the State may adopt and implement such a permit program by—

"(i) notifying the Administrator that the State will adopt and implement such a permit program;

"(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

"(iii) receiving from the Administrator—

"(I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and

"(II) a timeline for transition of control of the coal combustion residuals permit program.

"(B) REMEDYING DEFICIENT PERMIT PROGRAM.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection (e)(1)(B), the State may adopt and implement such a permit program by—

"(i) remedying the deficiencies detailed in the notice provided under subsection (d)(2)(A); and

"(ii) receiving from the Administrator—

"(I) a determination that the deficiencies detailed in such notice have been remedied; and

"(II) a timeline for transition of control of the coal combustion residuals permit program.

"(C) RESUMPTION OF IMPLEMENTATION BY STATE.—For a State for which the Administrator is implementing a coal combustion residuals permit program under subsection

(e)(1)(C), the State may adopt and implement such a permit program by—

"(i) notifying the Administrator that the State will adopt and implement such a permit program;

"(ii) not later than 6 months after the date of such notification, submitting to the Administrator a certification under subsection (b)(2); and

"(iii) receiving from the Administrator—

"(I) a determination that the State coal combustion residuals permit program meets the specifications described in subsection (c)(1); and

"(II) a timeline for transition of control of the coal combustion residuals permit program.

"(2) REVIEW OF DETERMINATION.—

"(A) DETERMINATION REQUIRED.—The Administrator shall make a determination under paragraph (1) not later than 90 days after the date on which the State submits a certification under paragraph (1)(A)(ii) or (1)(C)(ii), or notifies the Administrator that the

deficiencies have been remedied pursuant to paragraph (1)(B)(i), as applicable.

"(B) REVIEW.—A State may obtain a review of a determination by the Administrator under paragraph (1) as if such determination was a final regulation for purposes of section 7006.

"(3) IMPLEMENTATION DURING TRANSITION.—

"(A) EFFECT ON ACTIONS AND ORDERS.—Actions taken or orders issued pursuant to a coal combustion residuals permit program shall remain in effect if—

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

"(ii) the Administrator takes control of a coal combustion residuals permit program from a State under subsection (e).

"(B) CHANGE IN REQUIREMENTS.—Subparagraph (A) shall apply to such actions and orders until such time as the Administrator or the head of the lead State agency responsible for implementing the coal combustion residuals permit program, as applicable—

"(i) implements changes to the requirements of the coal combustion residuals permit program with respect to the basis for the action or order; or

"(ii) certifies the completion of a corrective action that is the subject of the action or order.

"(4) SINGLE PERMIT PROGRAM.—If a State adopts and implements a coal combustion residuals permit program under this subsection, the Administrator shall cease to implement the permit program implemented under subsection (e) for such State.

"(g) EFFECT ON DETERMINATION UNDER 4005(c) OR 3006.—The Administrator shall not consider the implementation of a coal combustion residuals permit program by the Administrator under subsection (e) in making a determination of approval for a permit program or other system of prior approval and conditions under section 4005(c) or of authorization for a program under section 3006.

"(h) CLOSURE.—If it is determined, pursuant to a coal combustion residuals permit program, that a structure should close, the time period and method for the closure of such structure shall be set forth in a closure plan that establishes a deadline for completion and that takes

into account the nature and the site-specific characteristics of the structure to be closed. In the case of a surface impoundment, the closure plan shall require, at a minimum, the removal of liquid and the stabilization of remaining waste, as necessary to support the final cover.

"(i) AUTHORITY.—

"(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny any right of any State to adopt or enforce any regulation or requirement respecting coal combustion residuals that is more stringent or broader in scope than a regulation or requirement under this section.

"(2) AUTHORITY OF THE ADMINISTRATOR.—

"(A) IN GENERAL.—Except as provided in subsection (e) of this section and section 6005 of this title, the Administrator shall, with respect to the regulation of coal combustion residuals, defer to the States pursuant to this section.

"(B) IMMINENT HAZARD.—Nothing in this section shall be construed to affect the authority of the Administrator under section 7003 with respect to coal combustion residuals.

"(C) TECHNICAL AND ENFORCEMENT ASSISTANCE ONLY UPON REQUEST.—Upon re-

quest from the head of a lead State agency that is implementing a coal combustion residuals permit program, the Administrator may provide to such State agency only the technical or enforcement assistance requested.

"(3) CITIZEN SUITS.—Nothing in this section shall be construed to affect the authority of a person to commence a civil action in accordance with section 7002.

"(j) MINE RECLAMATION ACTIVITIES.—A coal combustion residuals permit program implemented under subsection (e) by the Administrator shall not apply to the utilization, placement, and storage of coal combustion residuals at surface mining and reclamation operations.

"(k) DEFINITIONS.—In this section:

"(1) COAL COMBUSTION RESIDUALS.—The term 'coal combustion residuals' means—

"(A) the solid wastes listed in section 3001(b)(3)(A)(i), including recoverable materials from such wastes;

"(B) coal combustion wastes that are co-managed with wastes produced in conjunction with the combustion of coal, provided that such wastes are not segregated and disposed of separately from the coal combustion wastes and

comprise a relatively small proportion of the total wastes being disposed in the structure;

"(C) fluidized bed combustion wastes;

"(D) wastes from the co-burning of coal with non-hazardous secondary materials provided that coal makes up at least 50 percent of the total fuel burned; and

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

"(2) COAL COMBUSTION RESIDUALS PERMIT PROGRAM.—The term 'coal combustion residuals permit program' means a permit program or other system of prior approval and conditions that is adopted by or for a State for the management and disposal of coal combustion residuals to the extent such activities occur in structures in such State.

"(3) STRUCTURE.—The term 'structure' means a landfill, surface impoundment, or other land-based unit which may receive coal combustion residuals.

"(4) REVISED CRITERIA.—The term 'revised criteria' means the criteria promulgated for municipal solid waste landfill units under section 4004(a) and under section 1008(a)(3), as revised under section 4010(c).".

(b) CONFORMING AMENDMENT.—The table of contents contained in section 1001 of the Solid Waste Disposal Act is amended by inserting after the item relating to section 4010 the following:

"Sec. 4011. Management and disposal of coal combustion residuals.".

**SEC. 303. 2000 REGULATORY DETERMINATION.**

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

**SEC. 304. EFFECT OF TITLE.**

This title and the amendments made by this title—

(1) supersede any regulations promulgated or being developed as of the date of enactment of this Act relating to coal combustion residuals; and

(2) specifically exempt coal combustion residuals from regulation under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.).

# TITLE IV—THERMAL DISCHARGES

**SEC. 401. SHORT TITLE.**

This title may be cited as the ''Environmental Impact of Thermal Discharges Act of 2011''.

**SEC. 402. THERMAL DISCHARGE.**

Section 316 of the Federal Water Pollution Control Act (33 U.S.C. 1326) is amended by striking subsection (b) and inserting the following:

''(b) COOLING WATER INTAKE STRUCTURES.—

''(1) DEFINITION OF STATE.—In this subsection, the term 'State' means a State authorized to administer a permit program under section 402.

''(2) STANDARDS.—

''(A) COOLING WATER INTAKE STRUCTURES CONSTRUCTED AFTER JANUARY 17, 2002.—For any cooling water intake structure that commences construction after January 17, 2002, any standard established under section 306 and applicable to a point source shall require that the location, design, construction, and capacity of the cooling water intake structure reflect the best technology available for reducing adverse environmental impact.

"(B) COOLING WATER INTAKE STRUCTURES CONSTRUCTED ON OR BEFORE JANUARY 17, 2002.—For any cooling water intake structure that commenced construction on or before January 17, 2002, any standard established under section 301 shall require that the location, design, construction, and capacity of the cooling water intake structure reflect the best technology available for reducing adverse environmental impact.

"(3) SITE-SPECIFIC ADVERSE ENVIRONMENTAL IMPACT DETERMINATION.—

"(A) IN GENERAL.—Except as provided in subparagraph (C), the Administrator or State, if applicable, shall determine whether the cooling water intake structure described in paragraph (2)(B) creates an adverse environmental impact at the site in which the cooling water intake structure is located.

"(B) SHELLFISH, FISH, OR WILDLIFE MORTALITY.—

"(i) IN GENERAL.—In making the determination under subparagraph (A), shellfish, fish, or wildlife mortality shall not be

considered an adverse environmental impact unless—

"(I) a demonstrable, quantifiable, and continuous decline in any shellfish, fish, or wildlife population occurs in or on the body of water on which the cooling water intake structure is located; and

"(II) the Administrator or State, as applicable, determines that the decline is specifically attributable to that cooling water intake structure.

"(ii) PRESUMPTION; CLEAR AND CONVINCING EVIDENCE.—In making the determination under clause (i)(II), the Administrator or State, as applicable, may presume that the cooling water intake structure is not causing an adverse environmental impact unless there is clear and convincing evidence to the contrary.

"(C) CERTAIN CATEGORIES OR CLASSES OF COOLING WATER INTAKE STRUCTURES.—The Administrator or State, as applicable, shall not be required to make the determination under subparagraph (A) for any category or

class of cooling water intake structure that the Administrator or State, as applicable, determines, because of the location, design, capacity, or other factors, is unlikely to cause an adverse environmental impact.

"(4) SITE-SPECIFIC SELECTION OF BEST TECHNOLOGY AVAILABLE.—For any cooling water intake structure described in paragraph (2)(A), or if the Administrator or State, as applicable, makes the determination described in paragraph (3)(A), the Administrator or the State, as applicable, shall select the best technology available for the cooling water intake structure using a site-specific cost-benefit analysis that ensures the benefits of the cooling water intake structure technology selected justify the costs, taking into consideration—

"(A) any costs associated with any feasible alternative cooling water intake structure technology;

"(B) any likely environmental and economic benefits;

"(C) any nonwater quality environmental or water consumption impacts;

"(D) any energy requirements;

"(E) the remaining useful life of equipment and facilities involved;

"(F) the process employed;

"(G) the engineering aspects of the application of various types of control techniques;

"(H) electricity reliability impacts;

"(I) land availability;

"(J) lost revenues; and

"(K) other factors that the Administrator or State, as applicable, determines to be appropriate.

"(5) ALTERNATIVE TECHNOLOGIES.—Any owner or operator of any cooling water intake structure described in paragraph (2) may use restoration measures, including restocking fish and shellfish, improving the surrounding habitat, and alternative techniques in lieu of modifying the cooling water intake structure if the Administrator or State, as applicable, determines that the restoration measures achieve substantially the same environmental benefits as the best technology available selected under paragraph (4).

"(6) CREDIT FOR PREVIOUSLY INSTALLED FISH-PROTECTION TECHNOLOGY.—The Administrator or State, as applicable, shall provide credit for

any impingement or entrainment reductions resulting from a previously installed fish-protection technology, as the Administrator or State determines to be appropriate.''.

**SEC. 403. REGULATIONS.**

Effective beginning January 1, 2011—

(1) the Administrator shall not promulgate any regulation regarding cooling water intake structures that is inconsistent with this title or an amendment made by this title; and

(2) any regulation described in paragraph (1) that is promulgated on or after January 1, 2011, and prior to the date of enactment of this Act shall have no force or effect.

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