



Oppose Amendments 186, 194, 195, 196, 197, 199, and 211 **Amendments would endanger public health and waste money**

The Coalition for Sensible Safeguards (CSS) urges your opposition to seven dangerous, wasteful, and short-sighted amendments to S. 493, the SBIR/STTR Small Business Reauthorization Act of 2011. These amendments would threaten public health by delaying the enforcement of important health rules, defunding critical safety agencies, and adding costly and time-consuming procedural hurdles to the rulemaking process.

Cornyn Amendment 186 would eliminate public protections without public input. This amendment would establish an eight-member commission of lawmakers with unprecedented powers to review and decide which agencies and programs are no longer needed or should be altered. This eight-member commission would substitute its judgment for that of the whole Congress, leaving committees unable to carefully consider the virtue and effectiveness of programs under their jurisdiction and preventing Congress from exercising its oversight and authorization responsibilities.

Collins Amendment 194 would unnecessarily increase OMB power and burden agencies. This amendment would make major changes in the rulemaking process by making it a law that cost-benefit analysis must be done on major rules, major guidance documents, and alternatives to the proposed regulation. By forcing guidance documents through the same analytical maze as regulations, both businesses and the public will be harmed by the delay and uncertainty created by the lack of guidance from agencies.

Collins Amendment 195 would reduce penalties for violators. This amendment would grant new powers to the Small Business Administration Office of Advocacy to advocate for reduced enforcement penalties for small entities that have broken the law. By mandating a one-time free pass for small entities who violate paperwork or reporting requirements, Congress would hurt agencies' abilities to collect adequate information for formulating safety rules and reward bad actors, as small entities would know they could avoid complying with reporting requirements until they are caught for the first time.

Collins Amendment 196 would burden agencies and businesses. This amendment would require that before issuing a significant guidance document, the agency would have to submit it to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review, along with an exhaustive analysis quantifying the costs and benefits of issuing the document and any adverse impacts the guidance may have on the economy. This onerous process will discourage agencies from issuing guidance documents, making compliance with rules harder, particularly for small businesses who rely on the government for such guidance and assistance.

Hutchison Amendment 197 would disrupt delivery of health care benefits. This amendment would delay implementation of the Affordable Care Act until court cases on the constitutionality of the individual responsibility requirement are settled. Stopping implementation of the Affordable Care Act would mean a major loss in health care benefits and security for working families. It would also run contrary to the opinion of one of the judges who stayed his decision against the law, noting that stopping implementation “would be extremely disruptive and cause significant uncertainty.”

Paul Amendment 199 would slash agency budgets and eliminate the CPSC. This amendment would drastically and recklessly cut funding for federal agencies, reducing the number of scientists, inspectors, and other professionals responsible for writing and enforcing rules to protect our air, water, and public health. Among the casualties of these cuts would be the Consumer Product Safety Commission (CPSC), the agency responsible for ensuring the safety of toys, cribs, and other consumer products. In response to widespread product recalls in 2007 and 2008, Congress voted to give the CPSC increased resources and enforcement powers; this amendment would instead abolish the CPSC.

Snowe-Coburn Amendment 211 would burden agencies, delay rules, and waste resources. This amendment would require periodic review of existing rules and their impact on small businesses, with agencies required to determine, after a detailed assessment, whether a rule must be modified, rescinded, or continued unchanged. It would also empower the Chief Counsel for the Small Business Administration Office of Advocacy to nullify any rule that was not, in his opinion, adequately reviewed. This amendment would waste agency resources and time by requiring agencies to conduct regulatory flexibility analyses on the “indirect” economic impact of rules, an undefined term so vague that full compliance would be nearly impossible.

These amendments would threaten public health and safety by cutting or wasting agency resources, delay the implementation of health rules, and require agencies to devote more time and money to performing exhaustive regulatory analyses rather than implementing and enforcing public protections. The Coalition for Sensible Safeguards urges you to oppose each of these amendments.

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Oppose Cornyn Amendment 186 Would Eliminate Public Protections Without Public Input

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. John Cornyn (R-TX) to S. 493, a reauthorization of parts of the Small Business Act. Amendment 186, entitled "United States Authorization and Sunset Commission Act of 2011," would create a small commission of lawmakers to review and propose the "abolishment of agencies and programs" of the federal government. Such a sunset commission could dismantle public protections through a process that leaves the American people in the dark.

The amendment would establish an eight-member commission of lawmakers with unprecedented powers to review and decide which agencies and programs are no longer needed or should be altered. Every agency and program in the federal government would be subject to review by this commission, but at a minimum the review schedule must include at least 25 percent of agencies and programs listed on a Congressional Budget Office report on expired and expiring authorizations and a Government Accountability Office report on duplicative agencies and programs. The commission would evaluate each agency and program according to ten criteria set forth in the amendment. However, there is no clear guidance in the amendment on how these criteria are defined or how they should be applied.

The commission would follow a two-step process. First it would develop a bill at least every 10 years that provides a schedule for review of agencies and programs. That bill would be fast-tracked through Congress in a non-amendable form with limited time for debate. If approved, the commission would begin the second step: review of the agencies and programs on the schedule.

The commission's recommendations for eliminating, consolidating, or continuing the agency or program would then be sent to Congress as a bill. If within two years of the commission's review Congress does not reauthorize the agencies and programs in question or pass the commission's recommendations, the agencies and programs would be eliminated.

With the recommendations "fast-tracked," Congress would be forced to vote—without conducting its own assessment—on potentially hundreds of agencies and programs that affect the environment, workers, consumers, health care, civil rights, education, housing, nutrition, transportation, the economy, and more, on which Americans rely for a better, more productive country.

A sunset commission would shift the balance of power within Congress. By voting to give a sunset commission the unprecedented authority to broadly reorganize government and terminate government programs, Congress would be abdicating its oversight and authorization responsibilities. Congress currently has the power to reorganize government agencies and programs when it determines the need to do so, and the legislative branch revisits programs' effectiveness and continued existence each year through oversight and reauthorization and appropriations processes.

Additionally, a fast-track approval process would rob congressional committees of their power to carefully consider the virtue and effectiveness of programs under their jurisdiction. A sunset commission would usurp committee authority and devalue the experience of committee members and their staffs. Ultimately the commission would undermine historically established roles for congresspersons and committees.

The commission would make its rulings behind closed doors without notice, comment, or open meetings. The commission would not be required to take any input from the public or to hold open deliberations, and the public would never know the rationale behind decisions to eliminate or consolidate important federal agencies and programs. The only time the public would have any input on the commission's recommendations would be when those recommendations are up for a vote on the House and Senate floors. The lack of transparency in the commission's deliberations is of serious concern, because the commission would be entitled to review every agency and program and make decisions that would affect nearly every American.

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Oppose Collins Amendment 194 Would Unnecessarily Increase OMB Power and Burden Agencies

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. Susan Collins (R-ME) to S. 493, a reauthorization of parts of the Small Business Act. Amendment 194 would unnecessarily codify powers granted to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) through executive order, grant new powers to OIRA to include review of all major guidance documents as well as regulations from independent regulatory agencies, and drown agencies in an endless stream of analysis.

For more than three decades, presidents have issued executive orders that supplement the requirements of the Administrative Procedure Act (APA), the law that determines how agencies make the environmental, worker, consumer, health care, civil rights, education, housing, nutrition, transportation, and economic protections that enhance our quality of life. These regulatory executive orders have created a rulemaking process filled with procedural delays, manipulated by political considerations, and dominated by special interests.

SA 194 would further ossify the process and keep agencies in an endless loop of regulatory assessments. The amendment would:

- Codify elements from the regulatory review executive order for the first time even though there have been no hearings on the matter;
- Require that independent agencies, created by Congress to be free of executive branch political influence, submit all major rules and guidance documents to OIRA for review and approval;
- Require all agencies to submit for OIRA's review and approval major guidance documents, which are nonbinding, supplemental material produced by agencies to provide additional information on the implementation of rules. Guidance documents provide critical information to reduce uncertainty for regulated businesses;
- Require all agencies to produce a cost-benefit analysis of the impact of major guidance even though agencies would have already prepared a cost-benefit analysis for the rule the guidance documents help implement;
- Requires cost-benefit analyses for both rules and guidance documents to include indirect economic impacts, a potentially endless exercise designed to keep agencies in a loop of analysis for each rule and guidance; and
- Require agencies to perform cost-benefit analyses of "potentially effective and reasonably feasible alternatives" to the planned regulatory action.

This amendment makes major changes in the rulemaking process by making it a law that cost-benefit analysis must be done on major rules, major guidance, and alternatives to the proposed regulation. Yet there have been no hearings on the merits of such changes.

Moreover, including major guidance documents under OIRA review is based on the misguided notion that guidance documents are the same as regulations. By forcing guidance documents through the same analytical maze as regulations, both businesses and the public will be harmed by the delay and uncertainty created by the lack of guidance from agencies. The amendment would further reduce the discretion and expertise agencies have in implementing the responsibilities mandated by Congress.

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Oppose Collins Amendment 195 Would Reduce Penalties for Violators

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. Susan Collins (R-ME) to S. 493, a reauthorization of parts of the Small Business Act. Amendment 195 would amend the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.) to grant new powers to the Small Business Administration Office of Advocacy to advocate for reduced enforcement penalties. At the request of a small entity that has incurred a civil penalty for a reporting or paperwork violation, the Office of Advocacy could request that the agency reduce or waive the penalty, triggering a required response from the agency.

The amendment is duplicative and unnecessary. Upon passage of the Small Business Regulatory Enforcement and Fairness Act (SBREFA), agencies were required to establish a policy or program “to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity.” This provision actually allows for reduction or waiver of more penalties than Amendment 195, which only allows for reduction or waiver of penalties for failure to report information, meaning that Amendment 195 would offer no new remedies to small entities.

The amendment would hinder agencies’ ability to issue effective rules that protect the public. The information that agencies receive from regulated entities, including small entities, informs the agencies’ activities and can affect the decision to regulate and the substance of the regulation. Relaxing requirements for reporting information would reduce the data available to agencies, leaving them in the dark about potential problems in need of safety rules.

In 1999, the Senate considered a similar bill, S. 1378. In a hearing, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, John Spotila, noted several examples where reduced information collection could lead to dangerous conditions:

- The Department of Transportation requires the reporting of certain accidents. “If a company fails to notify DOT promptly after an accident, information important to the investigation may be lost or destroyed. . . . Companies who delay the reports until being notified of a violation may compromise public safety, even though it may not be possible to show that they cause serious harm to the public interest or a danger to the public health or safety, the standards proposed in S. 1378.” This exclusion is similar to those in Amendment 195, which excludes waiver of penalties for violations that “pose serious health, safety, or environmental threats.”
- The Clean Water Act requires regulated entities to report pollution discharges. “In a recent case in California, EPA and a regional water quality control board were concerned that a company withheld and misrepresented data relating to the amount of sealife killed by a cooling water intake system. This made it hard to assess the extent of any damage to water quality and sealife.”¹

The amendment rewards bad actors. By giving small entities a free pass to avoid reporting requirements, this amendment would encourage more violations, as small entities would know they could avoid complying with reporting requirements until they are caught for the first time. Meanwhile, law-abiding businesses that faithfully and promptly follow reporting requirements would be disadvantaged.

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ⁱ *H.R. 391 and S. 1378—The Small Business Paperwork Reduction Act Amendments of 1999: Hearing Before the S. Comm. on Gov't Affairs, 106th Cong. 11-12 (1999) (statement of John T. Spotila, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget).*



Oppose Collins Amendment 196 Would Burden Agencies and Businesses

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. Susan Collins (R-ME) to S. 493, a reauthorization of parts of the Small Business Act. This amendment would require that before issuing a significant guidance document, the agency would have to submit it to the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) for review, along with an exhaustive analysis quantifying the costs and benefits of issuing the document and any adverse impacts the guidance may have on the economy.

Amendment 196 would place significant procedural hurdles in front of any agency that was trying, through the use of guidance documents, to clarify issues for those impacted by their rules. Under Amendment 196, issuing these guidance documents would become so burdensome that most agencies would likely stop using them. This will make compliance harder, particularly for small businesses who rely on the government for such guidance and assistance.

By imposing unnecessary and costly burdens on agencies, the potential of this amendment is far-reaching and highly detrimental.

The amendment is attacking an abuse that does not exist. Agencies generally issue guidance documents to make life easier for the entities they regulate by clarifying what a rule means and how it should be applied.

Some guidance documents are written specifically to help small businesses. The Food and Drug Administration (FDA), for example, is developing new guidance to industry on the drug approval process. One of its goals is that the guidance documents give to new and emerging biotech companies the information they need to qualify for FDA approval.

The amendment will hamstring businesses by leaving them in the dark about how best to comply with rules and regulations on the books. By adding a cumbersome review process, agencies will use valuable staff time and resources to justify the advice they wish to give. This review will inevitably delay the issuance of guidance documents, and also prompt agencies to withhold guidance to avoid these new burdens.

The amendment attempts to limit the impact of this burden on agencies by excluding those guidance documents that do not interfere with any policy or action taken by another agency. The OIRA Administrator would have the ability to exclude certain categories of agency documents, if the Administrator and the agency head agreed they should be excluded.

But an agency would not know if a guidance document would be inconsistent with another agency's actions or plans, unless it expended time and effort to investigate. And leaving the power to exclude or include categories of agency documents in the hands of the OIRA Administrator concentrates great power in just one small office known for its history of interfering in efforts to protect the public through regulation and of overruling agency expertise.

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Oppose Hutchison Amendment 197 Would Disrupt Delivery of Health Care Benefits

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. Kay Bailey Hutchison (R-TX) to S. 493, a reauthorization of parts of the Small Business Act. Amendment 197 would delay implementation of the Affordable Care Act until court cases on the constitutionality of the individual responsibility requirement are settled.

Congress should not halt implementation of a law that is already helping 165 million people based on one judicial anomaly. Stopping implementation of the Affordable Care Act would mean a major loss in healthcare benefits and security for working families. By supporting this amendment, insurance companies will be given full reign to drop coverage when people get sick or deny coverage due to pre-existing conditions. Delaying implementation of the Affordable Care Act also would end prescription drug relief for seniors, erase tax breaks to help small businesses cover their employees, and impede health care access and affordability for working families.

To date, three U.S. District Court judges have upheld the law and 15 cases have been dismissed. In the two cases with rulings against the Affordable Care Act, one judge vastly overreached to strike the entire law, while the other ruled against only one small piece of the law that doesn't take effect until 2014.

- When Judge Roger Vinson – the Florida judge who ruled the individual mandate in the Affordable Care Act unconstitutional – stayed his decision against the health care law, he noted that stopping implementation of health care **"would be extremely disruptive and cause significant uncertainty."**
- Congress should not refight the same old political battles of the last two years so they can take away the consumer and patient protections in the law and put the insurance companies back in charge.
 - Stopping implementation of the Affordable Care Act puts people with chronic diseases and pre-existing conditions back at the mercy of insurance companies – up to 129 million Americans have some type of pre-existing condition or chronic disease and would be at risk of losing their insurance.
 - Stopping implementation would mean raising taxes on four million small businesses by taking away the tax credits they can receive to make health care more affordable.
 - Stopping implementation would take away benefits for seniors; including, the \$1,500 in savings seniors who hit the Medicare prescription drug "donut hole" can receive.
 - Stopping implementation would take away health insurance for the 1.2 million young adults who are now able to stay on their parents' insurance until they are 26.

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Oppose Paul Amendment 199 Would Slash Agency Budgets, Eliminate CPSC

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. Rand Paul (R-KY) to S. 493, a reauthorization of parts of the Small Business Act. Amendment 199 would drastically and recklessly cut funding for federal agencies, reducing the number of scientists, inspectors, and other professionals responsible for writing and enforcing rules to protect our air, water, and public health.

This amendment contains many deeply troubling funding cuts totaling \$200 billion. The amendment leaves few agencies and programs unscathed, slashing the budgets of the U.S. Environmental Protection Agency, the department of Labor, Health and Human Services, and Transportation, and other agencies responsible for ensuring the health and welfare of the American people, resources, and economy.

One of the most draconian and dangerous cuts is the proposal to abolish the Consumer Product Safety Commission (CPSC), the agency responsible for making sure the products we buy don't kill us or our children.

This amendment would open the floodgates for poisonous toys, flammable clothes, and other deadly products. After the widespread rash of recalls in 2007 and 2008, Congress passed the Consumer Product Safety Improvement Act (CPSIA), which increased the resources and enforcement capabilities of the CPSC. This law was Congress' promise to injured consumers and the families of those killed by dangerous products that it would work with the CPSC to get rid of cribs that kill, toys with lead paint, and phthalate-tainted children's products in an effort to reduce injuries, illnesses, and deaths.

This amendment would create massive consumer uncertainty about which products are safe, and which aren't. Recognizing that the CPSC can't be everywhere all the time, the CPSIA authorized the creation of a CPSC database where consumers can report dangerous products. Consumers considering a purchase can check the database to see if there have been problems with that product and make an informed decision. If the CPSC were abolished under Amendment 199, consumers would be left in the dark about the safety of their purchases.

This amendment runs counter to strong public support for the CPSC. A spokesman for Senator Paul claimed that the CPSC was unnecessary and that product safety could be ensured by independent groups like *Consumer Reports* magazine. In response, Consumers Union, the publisher of *Consumer Reports*, wrote:

The Consumer Product Safety Commission is absolutely critical to ensuring the safety of thousands of products in the marketplace. When it comes to product safety, the CPSC is the cop on the beat. We've got to have them. At Consumer Reports we recently did a national poll that found Americans strongly support the federal government's role in protecting people from unsafe consumer products. The overwhelming majority of respondents – 98 percent – agreed that the federal government should play a prominent role in improving product safety. 82 percent strongly agreed the federal government should require testing by manufacturers

of children's products to ensure they do not contain any harmful substances. That's why we have a CPSC, and that's why we need them.¹

We urge you to oppose Paul Amendment 199 if it comes to the floor.

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¹ Marcus Baram, *Rand Paul: Replace CPSC with Consumer Reports Magazine*, HUFFINGTON POST, March 16, 2011, http://www.huffingtonpost.com/2011/03/16/japan-was-warned-of-safet_n_836511.html#4_rand-paul-replace-cpsc-with-consumer-reports-magazine.



Oppose Snowe-Coburn Amendment 211 Would Burden Agencies, Delay Rules, Waste Resources

The Coalition for Sensible Safeguards (CSS) strongly opposes an amendment offered by Sen. Olympia Snowe (R-ME) and Sen. Tom Coburn (R-OK), to S. 493, a reauthorization of parts of the Small Business Act. Amendment 211 would attach the “Small Business Regulatory Freedom Act of 2011” to S. 493.

This amendment would amend the Regulatory Flexibility Act in ways that would impose severe burdens on federal agencies, delaying rulemaking and wasting staff and resources, while assuming that by virtue of size, small businesses pose little or no threat to public health and safety.

- It would require a periodic review of existing rules and their impact on small businesses, with agencies required to determine, after a detailed assessment, whether a rule must be modified, rescinded or continued unchanged. *If an agency fails to conduct a periodic review of a particular rule or regulation, or to perform the review adequately, the amendment gives the Chief Counsel for the Office of Small Business Advocacy the unprecedented power to nullify the rule.*
- Current law requires that EPA, OSHA, and the Consumer Financial Protection Bureau convene burdensome small business review panels to review rules before they can be proposed, giving them the first crack at weakening them. This amendment would extend this small business panel review requirement to all agencies.
- It would require agencies to conduct full regulatory flexibility analyses on rules that only have “indirect” impacts on small businesses, without defining "indirect" impacts and without regard to whether a small business is regulated by the rule. This would greatly expand the scope of agency analyses.
- Agencies would not only be required to assess the impact of rules on small business, but also of guidance documents, despite the fact that many guidance documents are written specifically to help businesses comply with federal laws.
- It would require agencies to conduct time- and resource-intensive periodic reviews of their penalty reduction programs for small businesses, even though these programs undermine agency efforts to hold small businesses accountable for harming people or the environment.

Amendment 211 is biased in that it focuses only on the costs a regulation has on society while ignoring its economic benefits. It uses an estimate that the annual cost of federal rules and regulations is \$1.7 trillion which is based on a flawed study that did not estimate the benefits of regulations. Official estimates from the Office of Management and Budget, during both Democratic and Republican Administrations, have uniformly found that the benefits of regulation far exceed the costs and that costs are much less than identified in this amendment. For the fiscal years 2001-2010, the OMB estimated the combined cost of major regulations at between \$44 billion and \$62 billion, with benefits of regulation at between \$136 billion to \$651 billion.

This amendment will threaten public health and safety by draining agency resources performing regulatory analyses rather than implementing and enforcing standards.

By discouraging federal agencies from vigilant oversight of all businesses, large and small, this amendment puts all American families in jeopardy.

By imposing burdens on safety agencies like the Food and Drug Administration, this amendment would threaten public health. Small businesses can cause huge public health risks. The Peanut Corporation of America, for example, was a family owned business employing 90 workers in three states with annual sales of \$25 million.ⁱ Yet its failure to ensure that its processing plants were clean and met food safety standards, sickened more than 700 people, and may have caused at least nine deaths from salmonella poisoning, prompting one of the largest food recalls in US history. Nearly 4,000 products made by more than 200 companies were recalled.ⁱⁱ

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ⁱ Dan Chapman, Margaret Newkirk, "Blakely plant part of firm with humble start: Company of hardworking Lynchburg, Va., CEO has faced trouble before," *The Atlanta Journal Constitution*, 8 Feb. 2009.

ⁱⁱ Kelsey Wittenberger and Erik Dohlman, "Peanut Outlook: Impacts of the 2008-09 Foodborne Illness Outbreak Linked to Salmonella in Peanuts," A report from the Economic Research Service, US Department of Agriculture, Feb. 2010.